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IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE G. THOMAS PORTEOUS, JR.

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE G. THOMAS PORTEOUS, JR., A JUDGE IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

November 16, 2010

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Volume 3 of 3, Part E
VIII. EXHIBITS ADMITTED (IN NUMERICAL ORDER)

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

- - -

IMPEACHMENT TRIAL COMMITTEE

- - -

IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.

PRE-TRIAL DEPOSITION OF JACOB AMATO

- - -

C-L-O-S-E-D H-E-A-R-I-N-G

Washington, D.C.

August 2, 2010

IMPEACHMENT OF G. THOMAS PORTEOUS, JR.

PRE-TRIAL DEPOSITION OF JACOB AMATO

CLOSED HEARING

- - -

MONDAY, AUGUST 2, 2010

United States Senate,

Impeachment Trial Committee,

Washington, D.C.

The pre-trial deposition of Jacob Amato convened at 1:04 p.m. in Room SVC-214, Senate Visitors Center, Honorable Claire McCaskill, Chairman of the committee, presiding.

Present: Senator Claire McCaskill, Chairman; Congressman Adam B. Schiff, Chairman of the Impeachment Task Force; Phillip M. Tahtakran, Counsel for Congressman Schiff; Daniel C. Schwartz, counsel for Judge Porteous; Daniel T. O'Connor, counsel for Judge Porteous; Ralph Capitelli, counsel for the witness; Harold Damelin, Special Impeachment Counsel; Rebecca Seidel, counsel for the Senate Impeachment Trial Committee; Morgan Frankel, Senate Legal Counsel; Derron Parks, Senate Impeachment Trial Committee; Erin P. Johnson, Senate Impeachment Trial Committee; Lake Dishman, Senate Impeachment Trial Committee; Trey Amato, son of witness.

SENATOR McCASKILL: We'll get started here in the matter of the impeachment of Judge G. Thomas Porteous, Jr., the Senate Impeachment Trial Committee has authorized this pretrial examination at the request of Judge Porteous. The witness at this pretrial examination is Jacob Amato. Mr. Amato, please raise your right hand for the administration of the oath.

Do you swear or affirm under the penalties of perjury that the testimony you shall give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

SENATOR McCASKILL: Before we begin the examination, would everyone please introduce themselves for the record. We'll go around the table, beginning on my immediate left.

MR. TAHTAKRAN: Phil Tahtakran, counsel to Congressman Schiff.

MR. DAMELIN: I'm Harold Damelin, I'm special impeachment counsel.

CONGRESSMAN SCHIFF: Adam Schiff, chair of the Impeachment Task Force.

MR. O'CONNOR: Dan O'Connor, counsel for Judge Porteous.

MR. SCHWARTZ: Dan Schwartz, counsel for Judge Porteous.

THE WITNESS: Jacob Amato, witness.

MR. CAPITELLI: Ralph Capitelli, counsel for Jake Amato.

MS. SEIDEL: Rebecca Seidel, counsel for the Senate Impeachment Trial Committee.

MR. FRANKEL: Morgan Frankel, Senate legal counsel.

MR. PARKS: Derron Parks with Senator McCaskill and the committee.

SENATOR McCASKILL: And I'm Senator Claire McCaskill, the chairman of the Senate Impeachment Trial Committee.

As the parties have already been informed, this examination will last up to three hours. It's my intention that counsel for the House of Representatives will have the final 20 to 30 minutes. I appreciate counsel's cooperation in the division of time. I expect to continue right through the time divided as I've described. However, Mr. Amato, if you need a break at anytime, just let your counsel know, and we will be happy to break at your convenience if you need a break.

THE WITNESS: Thank you, ma'am.

SENATOR McCASKILL: Also, unlike some depositions you may be accustomed to, I highly discourage form objections. Unless a question is confusing the witness, I will not be sustaining those objections. This is going to be a little weird for me. I've waited my whole life to rule on a hearsay objection, and I'm not going to get a chance.

MR. CAPITELLI: And I can't make one.

SENATOR McCASKILL: Yeah, you know, I've always wanted to be able to call balls and strikes on hearsay. If the court reporter is ready, then we can begin.

EXAMINATION

BY MR. SCHWARTZ:

Q. Mr. Amato, are you testifying today pursuant to immunity?

A. Yes.

Q. I've been handed a document which is an order signed by Judge Friedman in the District Court here. Is this the grant of immunity that you have received?

A. It appears to be the one that was sent to me prior to my --

MR. CAPITELLI: Yes, on his behalf, that

appears to be the immunity we're operating under in this deposition and for the trial itself.

MR. SCHWARTZ: Thank you. I would request that be entered as an exhibit. The first exhibit to this deposition.

(Amato Deposition Exhibit 1 was marked for identification.)

SENATOR McCASKILL: The exhibit will be admitted into the record.

BY MR. SCHWARTZ:

Q. Mr. Amato, what did you do to prepare for this deposition today?

A. What did I -- I met with Mr. Capitelli last Thursday for about an hour, and about half of the time was spent talking about the case and half of the time was just talking about old times and good times and things like that. Other than that, nothing.

Q. Thank you. You have previously testified or been interviewed in connection with Judge Porteous's impeachment proceeding; is that correct?

A. Yes.

Q. I would like to list some events that I'm aware of and just get your confirmation. You were interviewed before the grand jury in May of 2006; is

that correct?

A. It sounds right. I can't tell you the exact date.

Q. You did have an interview before the grand jury?

A. Right.

Q. You also gave testimony before the Fifth Circuit panel?

A. Yes.

Q. And you were deposed by the House Task Force?

A. Yes, sir.

Q. And you gave testimony before the House Judiciary Committee; is that correct?

A. Yes.

Q. Have you had any other interviews, testimony, or other statements in connection with this proceeding?

A. Not that I know of. I just -- it's been so long and talked to people, I just don't know, but I think that's basically the only statements I've given, you've outlined.

Q. Were you contacted or interviewed by anyone in connection with the nomination of Judge Porteous to the federal bench?

A. No, I was not.

Q. How did you first meet Tom Porteous?

A. Tom Porteous, when he got out of law school, was assigned to the Attorney General's office under some type of federal grant. He was assigned to the Jefferson Parish District Attorney's office as a special assistant to the Jefferson Parish District Attorney's office. At that time, I was employed by the Jefferson Parish District Attorney's office, and he was -- I was assigned to basically show him -- train him, and that's where I first met him. I imagine his first, second year out of law school. I'm a few years older than he is, so what years where -- I would roughly say 1972, roughly.

Q. Thank you. Just for the -- just for all of the people around the table, Jefferson Parish, where is it located as opposed to New Orleans?

A. Right across the river.

Q. On the western side of the river?

A. West bank -- well, east and west bank, and it runs to the Gulf of Mexico.

Q. And is the courthouse for Jefferson Parish in a city called Gretna?

A. Gretna, Louisiana, yes. It's been there

for years and years.

Q. And that is also on the west bank of the Mississippi?

A. On the west bank of Jefferson Parish.

Q. How far away from downtown New Orleans is downtown Gretna?

A. Well, it depends if you're driving or if you're a bird flying, but if you're driving, you can probably make it in ten minutes from downtown New Orleans, depending upon the traffic.

Q. And a little faster if you're a large bird?

A. Right.

Q. Thank you. Did there come a time when you and Tom Porteous formed a law firm together?

A. Yes.

Q. When was that?

A. '73, '74, something in that area.

Q. And what was -- why did you do that?

A. Why did we do it? I imagine we all had some desires to improve ourselves and to make a living. I really didn't have a practice at the time. I was basically full time in the DA's office, so Marion Edwards, Tom Porteous, and I got together and formed a firm.

Q. Who was Marion Edwards?

A. He was an assistant DA also who is now a Court of Appeals judge in Jefferson Parish.

Q. Did you and Tom Porteous continue to practice law together?

A. Yeah, we practiced law. I don't know for how many years. I mean, I can't tell you. I'm sure it was --

Q. Was it just a few years?

A. Two or three, four.

Q. Okay. And then what happened?

A. Bob Creely and I decided that we saw greener pastures, so we moved in with my brother-in-law and my sister who also were lawyers, and we practiced law together there for a while and started a partnership.

Q. You and Mr. Creely started a partnership?

A. Uh-huh.

Q. And you and Mr. Creely continued to practice law for many years?

A. Until 2005.

Q. Okay. What was your relationship with Tom Porteous after you stopped practicing law with him?

A. Just regular Tom. We never -- there was

no hostility. There was no animosity.

Q. Did you consider yourself friends?

A. Yes.

Q. Were you good friends?

A. Yes.

Q. Were your families close to each other?

A. Our families were close, but I mean, we didn't go to each other's house to eat dinner and stuff like that, but we would do stuff with our children. I don't know -- we never socialized as husband and wives, we really more socialized with the kids, taking them fishing and hunting and whatever, the circus, things like that.

Q. In fact, his children referred to you as Uncle Jake, right?

A. Some of them do. Some of them got too old, now they just call me Jake.

Q. Did you attend each other's family functions, Christmas parties and stuff?

A. No -- we had office Christmas parties that he showed up at, and there were Christmas parties for his office that we showed up at, you know. As far as a Christmas party at his house or a Christmas party at my house, no.

Q. Did you have any awareness of -- before

he became a state judge, did you have any awareness of Tom Porteous's financial situation?

A. No. Nothing, no.

Q. Did you become aware at a later point about his financial situation?

A. I'm still not aware of his financial situation.

Q. Were you aware that he was -- did you have a view as to whether he was good with money or poor in terms of his own financial health?

A. I didn't spend 24 hours a day worrying about how he spent his money.

Q. Did you spend any time worrying about how he spent his money?

A. No.

Q. When you were together as ADAs and as law partners, did you go to lunch together?

A. Sure.

Q. Frequently?

A. Yeah. Yes, we did.

Q. And did you continue to have lunch together?

A. Yes.

Q. Throughout the time that you knew him?

A. Up until this investigation started, yes,

we had lunch together.

Q. And when, in your view, did the investigation begin?

A. It seems like 20 years, but I'm sure it isn't. 2003, '4, I don't -- I really couldn't tell you.

Q. But up until that time, you had lunch together?

A. We certainly did.

Q. Was it customary for lawyers in Gretna to have lunch together?

A. Yeah. In fact, one time we had a table at a restaurant right close to the courthouse that all the judges and the lawyers would sit at the same table and eat. It was not uncommon.

Q. So you -- it was customary to have lunch with other judges?

A. Uh-huh.

Q. When Tom Porteous became a judge, a state judge, did you continue to have lunch together?

A. Uh-huh, yes, sir.

Q. How often do you think you had lunch with him during the ten years he was a state judge?

A. Twice a month, three times a month maybe. It's hard to tell. That's going back 25 years.

Q. And did you sometimes have lunch with other judges as well?

A. Yes.

Q. Were you friends with other state judges?

A. Sure.

Q. Which ones were you friends with?

A. I think all of them.

Q. Any in particular?

A. Well, let's see. Judge Petri, Judge McManus, Judge Benge, you know, just whoever -- Judge Collins, you know, two Judge Collins, I was friends with. They just -- there wasn't that many judges and there wasn't that many lawyers that you didn't get to be friends with them if you practiced law.

Q. It was just the way things worked around Gretna, around the parish?

A. I think it works everywhere like that.

Q. When you had lunch with Judge Porteous, was it just you and he or would there be other people?

A. Most of the time, it was with other people.

Q. Other judges?

A. Sometimes.

Q. Other lawyers?

A. A lot of times.

Q. Okay. Who paid for those lunches?

A. I paid for a lot of them. Other lawyers paid for some of the lunches, and I don't know who else. Sometimes somebody would pick up the tab, I wouldn't have any idea who picked up the lunch tab.

Q. In your experience, did a judge ever pay for his lunch when there was a group of you together?

A. Which judge?

Q. Any judge.

A. I'm sure we split bills for lunch over the years. I just can't be specific as to which judge I split a bill with when. I mean, there was some judges you couldn't buy lunch for, they wouldn't let you buy their lunch.

Q. What about Judge Porteous?

A. Buy him lunch?

Q. Would he buy lunch?

A. He has bought lunch, yes.

Q. Okay. But also you have bought lunch when you've had lunch with him?

A. Absolutely.

Q. Okay. And, again, that was customary,

you didn't see anything wrong with that in terms of buying lunch for judges, for example?

A. No.

Q. When Judge Porteous took the federal bench, did you continue to have lunch together with him?

A. Yes.

Q. And did you buy lunch or did he buy lunch during those times?

A. I bought lunch for him when he was a federal judge, yes, and other people bought lunch for him when he was -- we were all together and sometimes it was somebody else's turn to buy, you know.

Q. So it was pretty well -- was it pretty well known that you and Judge Porteous knew each other, were friends, had lunch together?

A. It's pretty hard not to know it in the community we live in.

Q. Because it was a small community?

A. Well, the legal community was small. The community's large.

Q. Okay. Did you and Judge Porteous ever go on any trips together?

A. Yes.

Q. What were those trips?

A. I know we went once down to Colombia when we were law partners to try to rescue a barge that was salvaged during a hurricane, which was quite an adventure. And I know we went to Mexico dove hunting once or twice. We may have gone deer hunting in Texas. We have gone duck hunting at different times, and we had a houseboat, Creely and I had a houseboat in Delacroix Island, which used to be some of the finest wetlands in the world, and we had a houseboat there, and I just couldn't see getting in the duck pond and shooting ducks, so I was in charge of cooking and making sure we had enough whiskey, I took him many times doing that.

Q. I'm sorry, you took him many times on that?

A. Duck hunting and fishing.

Q. And let me go back through each of these. You said you rescued a barge in Colombia. That's when you were both practicing together?

A. Practicing.

Q. The dove hunting in Mexico, when was that?

A. I couldn't tell you. I don't know if he was a judge or not. I don't know if he was a state

judge or not at the time. I really don't know.

Q. And deer hunting?

A. I think that was before he was a judge at all, I'm pretty sure of that. And I could be wrong. I mean, for a period of time, that was a pretty big deal to go deer hunting down at west Texas.

Q. And who paid for those outings?

A. Well, some of them were paid for by clients, you know, to go rescue a barge, they paid our way to go to that. To go fishing and hunting in Delacroix, you know, we just absorbed the cost, we were going fishing and hunting anyway, so one more guy. As far as going to Mexico, I don't know who paid for that.

Q. When you went fishing on your houseboat, did you invite -- you invited Judge Porteous and other people?

A. Sure.

Q. Did you invite other judges?

A. Yeah.

Q. And when you --

A. Yes, sir.

Q. When you invited them on your houseboat, did you ask them to pay any part of that?

A. Well, sometimes they would bring Cuban

cigars, and we would smoke some of those, sometimes somebody would bring whiskey, sometimes somebody would bring soft shell crabs, and somebody would bring stuffed crabs, you know, it's just a bunch of guys hanging out at the hunting lodge.

Q. Did Judge Porteous ever bring anything?

A. Sure.

Q. What did he bring?

A. I know he brought whiskey and he brought food on occasions, and he was the only one that helped clean up.

Q. I'm sorry, helped?

A. Clean up, after everybody got finished eating, he was the only one who would help me clean up. It was bad enough I had to cook, but to clean too.

Q. He accepted kitchen duty?

A. He accepted kitchen duties.

Q. I see. Did you ever appear before Judge Porteous when he was a state judge?

A. You know, I've thought about that, and I'm sure I have, and the only case I can remember is a case that I lost in front of him. And other than that, I have no recollection of any criminal or civil case that I can recall. I'm not saying I

didn't, you know. I think there was 16 judges over there, random allotment, very few cases of mine went before him.

Q. Did you feel that buying him lunch or taking him hunting was in any way going to affect his actions on the bench, if you had a case before him?

A. I didn't think so.

Q. Why not?

A. Just because I knew Tom, I mean, Judge Porteous. I never asked him to do anything, I never, you know -- I always thought he did the right thing irrespective of that, of taking him to lunch.

Q. What do you mean, you always thought he did the right thing, what does that mean?

A. I never thought that he was swayed to rule in my favor because we were friends or rule against somebody because they weren't his friends.

Q. How did you come to that judgment? What is the basis for that?

A. Well, I practiced law for 40 years, Mr. Schiff, and --

MR. CAPITELLI: That's not Schiff.

THE WITNESS: Oh, I'm sorry. Mr. Schwartz.

MR. SCHWARTZ: I'm Schwartz.

THE WITNESS: Schwartz, I'm sorry. After 40 years, you almost know the cases you're supposed to win and almost know the cases you're supposed to lose, and you know, I thought the cases I was supposed to win no matter who the judge was, I won. And the ones I was supposed to lose, I took it on the chin. Now there were some surprises along the way, of course, but I thought he called them as he saw them.

BY MR. SCHWARTZ:

Q. Okay. Did you feel you had received any special treatment from Judge Porteous because you were a friend?

A. Yeah, I could go in his office and have coffee, but other than -- you know, I think he gave me a continuance once because I wasn't feeling good, but other than that, I don't know of anything that stands out and says anything different.

Q. Did he have other friends that could go in his office and get coffee?

A. He had the best coffee in the courthouse, and all of the lawyers enjoyed going into his office and having coffee with him, and he was the last one to let you smoke in his chambers, so he was the hot

spot.

Q. You had mentioned you also were friends with some other judges, and you would go to lunches or dinners with other judges as well?

A. Sure, uh-huh.

Q. Did you appear before them?

A. Of course.

Q. Did you feel that that in any way affected how your matters before those judges turned out?

A. No.

Q. That's just how things were done down there?

A. Well, I wouldn't put any sinister motive on it, but, yes. Most of the judges were friends of mine before they became judges, and all of them remained friends after they became judges.

Q. Did you ever receive any appointments, like curatorships or other appointments from any of those judges?

A. I'm sure I did. I couldn't tell you how many and when and -- but of course I did get curatorships.

Q. Okay. Did you ever give any of them campaign contributions?

A. I think everybody who ran in Jefferson Parish, I gave campaign contributions to.

Q. Did you know a Judge Giacobbe?

A. Judge Giacobbe, yes.

Q. And were you good friends with him?

A. We grew up together and went to high school together and were friends.

Q. And did you litigate cases before him as well?

A. Did I litigate -- I don't remember ever trying a case in front of him. He was traffic court, I remember having, you know, DWIs that I worked something out and they pled in front of him. As far as actually trying a case in front of him, no, I don't recall. I'm not saying I didn't, I just don't recall ever trying a case in front of Judge Giacobbe.

Q. Did you ever sit ad hoc for him?

A. I did. I did, up until about a year or so -- maybe 18 months, two years ago maybe, yeah. He would call me when he needed somebody to sit and he would sit it on criminal days that he knew I had criminal experience, and he felt comfortable with me handling the cases. And I basically followed whatever he did sentencing-wise. And I never

embarrassed him in any way, or tried never to put him in any kind of awkward position.

Q. Explain what sitting ad hoc for him meant. What is that?

A. It means you go sit for a day or two while he has to go to a conference or out of town or to the doctors or whatever, and the state pays you his -- whatever they would pay him for a day, and I think it was like $340 a day to sit.

Q. So you would sit as if you were a judge?

A. A judge, yes. I would be appointed by the Supreme Court and swear an oath and file it, and I think over the last ten years, I might have done it ten times, twelve times. It just wasn't a big deal. It was more a favor to George than anything that mattered to me.

Q. George is?

A. Judge Giacobbe.

Q. Judge Giacobbe. And that was a pretty normal event?

A. He appointed a lot of people to do it.

Q. While Judge Porteous was on the state bench, did he ever ask for any money from you?

A. Not from me.

Q. Did you ever give him any money?

A. I don't think -- I don't think so.

Q. Were you aware that your partner Bob Creely was giving some money to Judge Porteous?

A. At some point in time, yes.

Q. Do you know when that started?

A. No. I don't know when it started and I don't know when I found out about it.

Q. What was the relationship -- what was your understanding of the relationship between Mr. Creely and Judge Porteous?

A. Friends, like Tom and I were, like Bob and I.

Q. Were you aware that Judge Porteous sometimes requested funds from Bob Creely?

A. At some point in time, I did, yes.

Q. When did you -- you don't know when you became aware of that?

A. No, I don't know when it started.

Q. How did you become aware of that?

A. Bob came in my office one day, and he said, Judge Porteous wants -- I think he was sending curator cases, he's been sending curator cases, and he wants some money in return. And I want you to go cash a draw check, each of us, and $500 each, and cash it and then it went to Judge Porteous.

Q. That's what Bob Creely said to you?

A. Right.

Q. Did you have any personal knowledge about that, other than what Mr. Creely told you?

A. No. I did know that there were cases coming in. I mean, there were curator cases coming in because the deputy would come to the door, here's a curator case. I mean, I wouldn't accept service, the secretary would.

Q. But you've been -- your law firm had been getting curator cases all along, correct?

A. Right, from other judges, the judges all want to give them to you.

Q. Maybe this would be a good time to explain what a curatorship is?

A. It's to represent an absent defendant. If somebody sues you for defaulting a mortgage, and they're unable to serve you after so many attempts, you then go to the court and the plaintiff would post cash for a curator to be appointed who would then, just the steps you take, you advertise, you have certified letters, you file an answer, and then when the house or property was sold, you would receive a check representing the work that you did as the curator.

Q. And who did the work in your office for curators?

A. Dianne Lamulle.

Q. Who is she?

A. She was Bob Creely's secretary.

Q. You've said that you also were assigned some curatorships. Did she handle those as well?

A. She could have or my secretary Debbie did, but I don't -- I think Diane did most, almost all of them.

Q. How were curatorships assigned?

A. By who?

Q. By anyone. They were assigned by judges, correct?

A. Yes.

Q. And did the -- how did the judge decide to whom to assign curatorships?

A. You would have to talk to a judge about that.

Q. What was your understanding?

A. Well, my original understanding was that the purpose was to help young lawyers get started, give them a little boost. And when I first started practicing law 40 years ago, what they would do is they would give curators so that they could have,

when the bar association met that it would use the funds from the curator pot to have the party. Now, who did it, when they did it, how long, I don't know. I just knew that they would have a party at the bar association, and it was free, and it was funded by curators.

Q. The judges had pretty much complete discretion about who to assign curatorships to?

A. As far as I know.

Q. That was your understanding?

A. I think that's -- yes.

Q. Were curatorships sometimes more complex? Did they sometimes require an appearance in court, for example?

A. Yes, sometimes they did require -- there were different types of curatorships, and some of them required appearances.

Q. Did that require a more experienced attorney?

A. No.

Q. Did you get any kind of those curatorships, to your knowledge?

A. Yes, and I don't know. I don't know when, but I'm sure I did get some over the years.

Q. Okay. My understanding is from what you

testified, and please correct me if I'm wrong, that you first learned that Bob Creely was making gifts to Judge Porteous when he came to you about the curatorships, is that your testimony?

A. I didn't find out that he was giving anything to him prior to these proceedings, prior to the curatorships.

Q. Okay.

A. I didn't know anything about that.

CONGRESSMAN SCHIFF: Just for clarification, counsel, you're referring to the cash?

MR. SCHWARTZ: Yes, I'm referring to gifts of cash.

THE WITNESS: That Creely gave to Judge Porteous prior to the curatorships? I had no knowledge of that.

BY MR. SCHWARTZ:

Q. Did he ever ask -- before that time, did he ask you to contribute to any cash gifts to Judge Porteous?

A. Not that I remember.

Q. Do you know why Mr. Creely gave cash gifts to Judge Porteous?

A. Do I know why? No, I don't know why

unless --

Q. Did you ask him?

A. I didn't ask him.

Q. Did he ever tell you?

A. Well, you know, obviously the judge needed money. Obviously the -- you know, he had some problems with, you know, I don't know, paying tuition, paying his house note, I don't know, something of that area, you know. That's why he needed money.

Q. Did you know independently that Judge Porteous had financial needs?

A. No.

Q. Anything you learned about that was from your partner, Mr. Creely?

A. Right.

Q. And Judge Porteous had never raised that subject with you at the time he was a state judge?

A. No.

Q. Do you know whether Bob Creely gave money to other people?

A. No.

Q. No, you don't know?

A. I don't know.

Q. When Mr. Creely came to ask you to

contribute to Judge Porteous, did you -- how did you give him money to give to Judge Porteous?

A. We would each draw a check for the curator cases that he had sent.

Q. You said for the curator cases that he had sent. Do you know that it was for that?

A. Unless Creely was lying to me. I mean, I presume that's what it was for.

Q. Now, Mr. Creely testifies that there was no connection between the curator cases --

MR. CAPITELLI: Objection to saying what someone else testified. I think the referencing of other testimony is not proper, is not a proper question.

CONGRESSMAN SCHIFF: If I could add, I don't think that's a correct characterization of Mr. Creely's testimony.

SENATOR McCASKILL: Why don't you try to rephrase the question to get at the same point, counsel.

MR. SCHWARTZ: Thank you, Senator, I appreciate that.

BY MR. SCHWARTZ:

Q. Was it your understanding that there was a connection between the money that was -- the cash

that was given to Judge Porteous and the curatorships?

A. At some point in time, yes.

Q. And how did you reach that understanding?

A. Bob Creely came in my office one day, told me that Porteous was sending curatorships, and he wanted us to, you know, give him some money back, and I told him this is going to wind up bad.

Q. I'm sorry?

A. And I told Creely it was going to wind up bad.

Q. You said that to Mr. Creely?

A. Yes.

Q. What was his response?

A. I don't know what his response was.

Q. If you thought it was going to wind up bad, why did you agree to contribute money?

A. Let's see. Two of my best friends, Bob Creely and Tom Porteous, had somehow put me in a position where I couldn't say no. I wasn't strong enough to say no. I wasn't strong enough to stop it, because to stop it, I would probably have been disbarred, Creely probably would have been disbarred, and probably Porteous would have been whatever happens to judges on the state court.

Q. But you could have just chosen not to give any money, right?

A. I could have.

Q. You've described one time that that happened. Has it happened again?

A. What, with Bob?

Q. Yes.

A. No.

Q. So it's just the one time is the only time you remember?

A. Uh-huh.

Q. How did your law firm work? Did you have -- you had a joint account that you drew from each week, am I correct in my understanding?

A. We had -- there was a professional lock operation, we had payroll accounts, escrow accounts, operating accounts, we would take a payroll check twice a month. And if we needed money, we would say Jody write a check, we need money.

Q. Jody, who is Jody?

A. Jody Ratolo, the bookkeeper.

Q. Who is the bookkeeper. And did you regularly cash checks to have cash?

A. Yeah. Yes, we did, both of us. It was usually in the same amount, usually on Thursday or

Friday.

Q. Why was it in the same amount?

A. Between Bob and I.

Q. Yes.

A. It was $500, a thousand, $1500. If he needed $1500 or whatever, I would get a check for $1500, too.

Q. So you would have almost consistently equal draws?

A. Correct.

Q. And the money that you withdrew, was that after-tax income to you, that's your money?

A. Yeah, we paid taxes on it, sure.

Q. So it's not the law firm's money at that point, it's your money?

A. It's my money.

Q. And you identified that as income and paid taxes on it?

A. I sure hope so. The CPA took care of all that.

Q. Thank you. That was your instruction and understanding?

A. Look, I'm -- I think we followed the tax code as best we could.

Q. Thank you. The money that you recall,

the one time you recall contributing money to give funds to Judge Porteous, that was -- again, that was from your personal -- those were your personal funds at that point?

A. Uh-huh.

Q. They were not law firm funds?

A. No.

CONGRESSMAN SCHIFF: I think counsel may be misapprehending what the testimony was earlier. When you referred to one time earlier, I think it was a one-time conversation, not a one-time payment.

THE WITNESS: A one-time conversation.

BY MR. SCHWARTZ:

Q. Were there other payments that you were aware of?

A. Uh-huh. Yeah.

Q. And how many of those were there?

A. Oh, I don't know. I just don't know.

Q. And those were payments that Mr. Creely came to you and asked you to contribute to money to go to Judge Porteous?

A. Correct.

Q. And what were the -- what was the reason for those payments? Was it just because Mr. Creely asked you for the money?

A. Yes.

Q. Did you -- do you know how the money was then provided to Judge Porteous?

A. As far as I know, it was cash in an envelope.

MR. DAMELIN: Could you speak up, please?

THE WITNESS: Cash in an envelope.

BY MR. SCHWARTZ:

Q. And who provided that cash in an envelope? Mr. Creely?

A. Yes.

Q. Did you ever -- while he was on the state bench, did you ever give cash in an envelope to Judge Porteous?

A. I don't remember, but I'm sure I did. I just don't remember anytime.

Q. You're sure you did?

A. Yeah.

Q. Do you recall the instance?

A. No.

Q. Do you recall how much cash?

A. No.

Q. Do you recall the circumstances?

A. No.

Q. Did a time ever occur that you're aware

of when Mr. Creely informed you that he did not want to give money to Judge Porteous anymore?

A. Yes.

Q. When was that?

A. I couldn't tell you.

Q. You don't know the time?

A. I don't know the time.

Q. What did he -- did he convey that to you?

A. Creely?

Q. Yes.

A. Yes.

Q. What did he say?

A. He said Tom's bugging the hell out of us for these curator fees, you know. I said, I don't know what to tell you, Bob, you know. I don't know how to handle it.

Q. Do you know what Mr. Creely was referring to when he said he was -- that Judge Porteous was bugging the hell out of him for the curator fees?

A. That Tom would call and tell Bob that he needed some of the curator money, you know, where are you and when can I get it?

Q. Did you participate in any of those conversations with Judge Porteous?

A. No.

Q. These were all conveyed to you by Mr. Creely?

A. Right.

Q. Did Mr. Creely, to your knowledge, continue to give money to Judge Porteous while he was on the state bench?

A. I don't know when it started and when it stopped. I mean, I really just don't know.

Q. Okay. Do you have any knowledge about how much money Mr. Creely gave Judge Porteous?

A. No. I mean, I have -- something between ten and twenty thousand dollars is the number that's been batted around, but, no, I never sat down and put a pencil to it.

Q. You said it's been batted around. Is that a number you came up with?

A. I don't know where it came from. I think they -- the number of curatorships that he sent us, and that that number seemed to be a reasonable amount.

Q. But there are no records of how much money was given to him that you know of, correct?

A. No, there's no records other than the curatorships at the courthouse would give you the number.

Q. That would give you the number of curatorships?

A. Right.

Q. But not necessarily the amount of money that was given to Judge Porteous?

A. No.

Q. I'm sorry?

A. It wouldn't give you the money to Judge Porteous.

Q. Were you upset about giving money to Judge Porteous?

A. I didn't feel comfortable with it, no, I didn't feel -- I wasn't all smiley face about it. I didn't think it was necessarily something we should be doing.

Q. But you continued to do it?

A. As I told you before, I wasn't strong enough to stop it.

Q. Do you think that giving that money to Judge Porteous in any way affected his handling of your matters or Mr. Creely's matters as a judge?

A. I don't think so.

Q. You do not think so?

A. I don't think it affected how he handled it. Now, I'm not saying he didn't give us certain

courtesies, but not as to any decisions. I mean, we went in to his court and he recognized us, and you know, we had something that was minor he would take us first or second and get us out of the courtroom and back to work, but other than that, no.

Q. And he would give those courtesies to other lawyers as well, correct?

A. Oh, absolutely. Yeah.

Q. Do you ever recall putting money in an envelope for Judge Porteous's secretary to pick up at your offices?

A. I don't recall it, but I wouldn't doubt that it didn't happen.

Q. You don't know if it happened?

A. I don't know if it happened.

Q. Did you -- when you withdrew money from your law firm, you mostly withdrew cash; is that correct?

A. No.

Q. Did you get checks as well?

A. Oh, sure. Yeah.

Q. Your --

A. We had regular payroll checks and regular, when we would make a nice fee, you know, we would write checks.

Q. Let me turn to the time he was on the federal bench, which was starting in 1994. At some point during the time he was on the bench, his son got married; is that correct?

A. Uh-huh. Yes.

Q. And did you go on a fishing trip with him a few days after that?

A. I think it was a few days before his wedding, I'm not sure.

Q. It was a few days before or after?

A. Yeah, it was in the general time frame of when the Porteous wedding was going to take place.

Q. Which is, by my notes, in June of 1999. Does that sound about right?

A. I know it was in June and I know it was in 1999.

Q. Did -- and tell us about the fishing trip.

A. Mitch Martin, who has been a long time client of mine, had a boat, and Ernie Alaria, who worked for me, we went fishing in Caminada Pass on a week night. Apparently the fish, white trout run at a certain time of the year at a certain hour as the tide changes, and we wanted to experience that, so we went fishing. And the judge and I was standing

on the front of the boat. He was pretty well lubricated, he had a --

Q. You mean he had been drinking?

A. It sure seemed he was, and he started crying, told me he couldn't afford his son's wedding, and would I help him out and lend him some money or give him some money, or arrange for him to get some money to pay for his part of the wedding. I did so within a few days after that. That's the only time he ever asked me for money.

Q. And there were no times before or after that event that he asked you for money?

A. No.

Q. This was, as I recall, a night fishing trip?

A. Yeah, when the tide changes, and I think it was like 12, 1:00, midnight, 1:00 in the morning. It's really something to see, the fish start bubbling up. If you have any interest in fishing, it's really something that hopefully comes back.

Q. Did you agree to give him money at that time?

A. Yeah. Yes, I did.

Q. Why?

A. Friendship.

Q. Did you feel sorry for him?

A. Yes.

Q. He seemed pretty emotional and distressed by all of this?

A. The most distressed I've ever seen him, yes.

Q. When you gave him the money, did you expect any quid pro quo of any kind?

A. No.

Q. At that time, you were litigating a case before him?

A. Yes.

Q. At that point, it was -- you were awaiting decision, the trial was over?

A. Yes.

Q. Did that case come to mind when you decided to agree to give him some money?

A. Yes.

Q. And what was your view of that?

A. My view of it was is that what comes first, the friendship or, you know, him being a federal judge. And I think Mr. Schiff asked me in my last testimony as to what percentage of it, and I considered 20 percent because he was a federal judge and 80 percent because he was my friend.

Q. Did you think that because he was a federal judge, giving him money would improve your chances of success before him?

A. No.

Q. Did you think it would have any impact on your chances for success before him?

A. No.

Q. Had Judge Porteous been drinking a lot that night?

A. Well, that's a tough question, but he looked like he was pretty well -- yeah, he looked like he was drinking a lot, you know.

Q. Had you been drinking as well?

A. Not to the extent that he was, but you know, I might have had one or two drinks. I'm sure I had a few drinks. Everybody's only had two drinks when they get stopped for driving. I don't know how many. I know I wasn't intoxicated.

Q. Okay. Would you have given him that money even if he wasn't a judge?

A. Probably.

Q. You would have given him that money even if he wasn't sitting on a case that you were involved in?

A. Probably.

Q. Where did the money come from to give to him?

A. I don't know if I had some cash, you know, at my house, or Creely and I split it, I don't know. That's eleven years ago. It's -- I just don't know.

Q. You don't recall?

A. I don't recall.

Q. Would you have had money around the house to pay for that much money?

A. Yeah.

Q. How did you get the money to him?

A. I think we went to lunch a couple of days later, and I gave him an envelope, I think.

Q. Do you know if that was a time that his secretary came over to pick up money from you?

A. It could well have been. I just don't know.

Q. Now, you had a case pending before Judge Porteous at that time, correct?

A. Yes.

Q. Tell us a little bit about that case. What was it about? Give us the 30-second summary.

A. It was about the Liljeberg brothers who had a hospital permit to open St. Jude's Hospital in

Kenner, who went into an agreement with Lifemark Hospital to have the pharmacy service and to build the hospital in a lease back and a building. Lifemark was solely the tenant, and they stole the building and the business from the Liljebergs. That's the 30 second version.

Q. Thank you. Which side were you representing?

A. I represented the plaintiffs, Liljebergs.

Q. And this litigation or some version of it had been going on for a while, right?

A. Yes.

Q. How long had it been going on?

A. I don't know. The Liljebergs were very litigious. So, you know, there were other cases at other times that I had nothing to do with. There were other cases going on at the same time that I did have stuff to do with, but I don't know how long it was in judgment. I don't know how long this litigation was going on.

Q. Have there been a number of judges hearing this case?

A. Yes.

Q. Do you know how it got to Judge Porteous?

A. I think one of the judges died and it was

reallotted to him.

Q. And before that, there had been other judges?

A. Yes.

Q. Do you know how many?

A. No. I think two or three, but I'm not sure.

Q. Was this -- let me -- were there other federal cases that you heard before -- that you had before Judge Porteous? That's the only one you had before him?

A. No, I had -- the office had another case in front of Judge Porteous, but I didn't have anything to do with it. It was an admiralty case.

Q. But this was the only case you had before Judge Porteous?

A. Right.

Q. Why were you brought into the case?

A. You're going to have to ask the Liljebergs.

Q. What was your understanding of why you were brought into the case?

A. I was a good lawyer. Had a good reputation at the time.

Q. Was this a kind of complex case that you

had handled before?

A. You know, I've been a trial lawyer my whole life, and I've tried innumerable cases, both in state court and Federal Court, both criminal, civil, personal injury. Yes, it was the hardest case I've ever handled, it was the hardest work I ever did on a case. And, yes, I felt confident of my ability to handle a case because of the people, other people who were involved in it. Don Richard, Doug Draper, Lenny Levenson, you know, pretty good, pretty fair size lawyers.

Q. The transaction -- I'm sorry, the dispute took place in the New Orleans area, that's where the property was?

A. Yes. Located in Kenner, Louisiana, in Jefferson Parish.

Q. Were the Liljebergs located in the New Orleans?

A. Yes, they were family pharmacists.

Q. Now, did you -- you took that case on a contingent fee basis; is that correct?

A. That's correct.

Q. Did you spend any time trying to decide whether you should take the case, evaluating it?

A. Yeah, I evaluated it before I would take

it.

Q. How long did you spend?

A. A couple months; two, three months.

Q. This was before you entered an appearance?

A. That's correct.

Q. What did you do to evaluate the case?

A. I made them show me all of the evidence they had, I made them tell me what we were going to try to prove, who we had to prove what elements, who was available to testify.

Q. And what was your analysis of the strength of the case at the time you took it?

A. I wouldn't have taken it if I thought I couldn't win it.

Q. And did that view continue through the case?

A. Through the minute I'm sitting here in front of you, Mr. Schwartz. That case was won.

Q. You think your side should have won?

A. I know my side should have won.

Q. You take -- did you take a lot of cases on a contingent fee basis?

A. At various times in my career, I did hourly work. And basically towards the end of my

career, I basically -- I took more and more contingency cases in business litigation and with personal injury, of course.

Q. Now, contingency cases are a bit of a gamble for the lawyer obviously?

A. Absolutely.

Q. And so did you become -- you became pretty adept at deciding whether you were going to win or not?

A. Absolutely.

Q. And you would only take cases that you thought you were going to win?

A. That I thought I was going to win and hope I was going to win, yes.

Q. At the time you were approached, had the case been assigned to Judge Porteous?

A. Yes.

Q. Do you think the fact that it was assigned to Judge Porteous had any impact on your analysis of the strength of the case?

A. No.

Q. No impact at all?

A. Well, the impact was is that, you know, maybe we could get a fair shake in Judge Porteous's court.

Q. Some courtrooms you might not get a fair shake?

A. Absolutely.

Q. Why did you think you could get a fair shake in Judge Porteous's court?

A. Because I've known Porteous for 30 something years, you know, knowing how he thought, knowing how he analyzed things, knowing how he would -- he would never tell you how he would rule, but you could tell, you know, like the card players, the tells, and you could tell how he was leaning before he leaned. I mean, I think that's part of the skills we get as lawyers over the years.

Q. And did you believe that that was simply because he was a fair, experienced judge or because he was your friend?

A. I think because I thought he was a fair and experienced judge.

Q. Did the fact that you and he were friends have any impact on that?

A. It didn't hurt.

Q. What does that mean?

A. Well, I mean, anybody who practices law likes to have a friendly judge to be in front of, you know. Yeah, I thought that was nice to have a

friendly judge hearing a case that I had before him.

Q. What does being a friendly judge mean?

A. Just a friend, just somebody who will listen to your arguments, listen to the evidence, rule based upon what's before him as opposed to his ideology, based upon something that, you know, what he had for breakfast, you know, the same things that go in front of everybody's human nature. He was human, he was compassionate, he was I thought brilliant, you know, I still think he's brilliant. And I thought he could cut the wheat from the chaff and render a fair decision favorable to my client based upon the evidence that we presented.

Q. Ultimately Judge Porteous issued an opinion?

A. Right. That's correct. I'm sorry.

Q. Was that opinion totally in your client's favor?

A. I think we won some, lost some. I just don't know. I haven't looked at that stuff in ten years.

Q. Do you think his opinion was generally correct?

A. I think it was more than generally correct.

Q. What do you mean?

A. I think he was absolutely correct.

Q. And then there was an appeal?

A. Yes.

Q. Did you read the Court of Appeals decision?

A. I'm sure I did. I can't quote it, but I'm sure I read it.

Q. What did you think about it?

A. I think they did an injustice to my clients.

Q. Now, I assume, like many of us around this table, and any of us who have been involved in litigation, you always think your client's right and the other side's wrong, right?

A. No, I've had some wrong clients.

Q. What about in this case?

A. No, I thought the Liljebergs -- I mean, the amount of evidence we produced, the amount of witnesses we produced, they never rebutted any of that testimony, discredited their witnesses, you know. The amount of massive theft that they did, that the tenant committed to my clients, and how they stole the hospital, you know. No. The Fifth Circuit was wrong, wrong, wrong.

Q. Now, the Fifth Circuit reversed part and vacated part and affirmed part, as I recall?

A. Something. Yeah.

Q. Do you recall that?

A. I recall that it was -- didn't -- it didn't add up to any money in my pocket, that's what I recalled.

Q. But it wasn't a complete reversal?

A. I don't think it was a complete reversal, no.

Q. Do you recall at anytime Judge Porteous made known that when the case was assigned to him, he was going to put it to trial? It was not going to see another judge?

A. Could you ask the question again, please?

Q. Yes, I'm sorry. Let me restate it. Do you recall at anytime Judge Porteous saying in the courtroom when the case was assigned to him that he intended to take it through trial, it was not going to get assigned to another judge?

A. I don't recall that. I don't deny that it might not have happened.

Q. But it's nothing you recall?

A. Nothing I recall.

Q. Okay, thank you very much. What was your

role in the trial?

A. Don Richard was lead attorney and I was second chair, and we decided how to split up witnesses, we prepared, we spent months and it seems like years getting ready for trial. We would meet on Saturdays and Sundays and nights and, you know, trial consultants, the whole nine yards.

Q. The trial date got moved back soon after you made an appearance; is that correct?

A. I don't recall.

Q. You don't recall that?

A. I don't know.

Q. Do you recall whether or not there was an original trial date set very soon after you made an appearance?

A. No, I don't recall that. I just don't know.

Q. Okay. So that was not a factor when you agreed to appear for that case? You didn't -- that was not a factor for you, the trial date?

A. No.

Q. Were you ever told that you were approached to help try this case because you were a friend of Judge Porteous's?

A. By whom and when? Where?

Q. At the time of the trial by anyone.

A. No. At the time of the trial, no.

Q. Was it -- it was suggested later?

A. Well, I'm -- I just don't --

MR. CAPITELLI: Could you clarify a little bit more?

THE WITNESS: I just don't understand. I mean, it was no secret I knew Judge Porteous, it was no secret that we were good friends, it was no secret that I practiced law, it was no secret that I tried cases. I mean, I don't know what more I can add to that.

BY MR. SCHWARTZ:

Q. Okay. But there was no specific reference at the time you were retained or went through the trial having to do with the fact that you were on the trial team because you were a friend of Judge Porteous's?

A. By whom?

Q. By anyone.

A. No, I don't recall anyone saying that to me.

Q. Thank you. Did Creely have any -- your partner, Bob Creely, have any role in the Liljeberg case?

A. Other than griped that, you know, I was spending too much time on it, no.

Q. But he had no role in it?

A. No.

Q. Did he know anything about it?

A. I guess about as much as he could catch out of the newspaper, but I don't -- I don't recall him sitting in on any strategy sessions or me sitting down and explaining to him what was going on or.

Q. So you never had a discussion with him about your role or the strength of the case or anything of that sort?

A. Not that I recall. I mean, you know, we could have talked about it, but I don't recall anything that is that specific.

Q. Okay. Soon after you made an appearance, filed an appearance in that case, the counsel for the other side, I believe Joe Mole, was that his name?

A. Yes, sir.

Q. Filed a motion to recuse?

A. Yes, sir.

Q. What did you think of that motion?

A. I thought the man did what he had to do.

MR. DAMELIN: Could you speak up? I'm sorry, sir.

THE WITNESS: I thought the man did what he had to do to protect his client. File a motion to recuse, file a motion for change of venue, file whatever you could -- you know, the kitchen sink file, you know, whatever you could do, do.

BY MR. SCHWARTZ:

Q. What was your view of the substance of the motion?

A. I think that's a question you're going to have to ask Judge Porteous as to the substance of the motion.

Q. Did you have a view of it at the time?

A. I really -- I really don't. I mean, you're talking 15 years ago. I've had three major surgeries since 15 years ago, I'm on enough medication to kill a horse. I cannot recall.

Q. Okay, I'm sorry for all of that.

A. Don't be sorry, just thank modern medicine.

Q. Okay. Had you had any discussions with Mr. Mole about your relationship with Judge Porteous prior?

A. Absolutely not.

Q. Did you have any discussion with him at any point about your relationship with Mr. Mole?

A. I never liked Joe Mole, I tried never to talk with him.

Q. So the answer to the question is, no, you did not have any discussions with him?

A. My answer no, definitely no, I did not have any discussions with Joe Mole.

Q. Thank you very much. At the time of the motion for recusal, had you given any money directly to Judge Porteous?

A. No. At the time? No.

Q. Had you gone out to lunch with Judge Porteous?

A. What, the day of the recusal, the day before?

Q. You had gone to lunch many times, right?

A. Yeah, I don't -- I'm sure we went to lunch within 30 days of the recusal hearing. I don't know.

Q. And that was disclosed in the hearings, that you were friends and had lunch together?

A. I'm pretty sure it was.

Q. How did you view the motion? Was it just another delay tactic?

A. That's basically what I thought of it. I mean, they had a hundred man law firm throwing motions at us and briefs and appeals and side issue lawsuits in state court. I mean, you know, it was a never ending saga.

Q. And representing the plaintiff, you were interested in a resolution?

A. Of course.

Q. And representing the defendant, they were interested in delaying any resolution, correct?

A. I think that's the appropriate jobs we both have.

Q. That's pretty standard stuff?

A. Nothing -- nothing new.

Q. Was there -- did Mr. Mole bring on board his side another lawyer who was a friend of Judge Porteous's?

A. Don Gardner.

Q. Don Gardner. Who is Don Gardner?

A. A lawyer who practices in Harahan who was a friend of all of us, Porteous, Creely, myself, probably half the lawyers in Jefferson Parish were friends with Don Gardner.

Q. Were you aware of the terms of Mr. Gardner's retainer agreement?

A. No, I was not.

Q. You were not aware he would get an additional $100,000 if Judge Porteous recused himself?

A. No.

Q. And what was Gardner's role during the case?

A. You're going to have to ask Mr. Gardner because I didn't see him do anything but show up.

Q. You didn't observe him taking any role in the trial?

A. No. I don't know what he did behind the scenes, just like these fine lawyers here who aren't asking questions, they're behind the scenes, but they're here.

Q. They'll get a chance to ask questions in a few minutes.

A. No, not all of them, please.

Q. At some point, you have testified before, and I don't have the exact language, but you testified at some point that you had had a conversation with Judge Porteous, and he had said something along the lines of you're going to have to prove your case?

A. That's absolutely correct, and not only

prove it to him, but sufficiently to overcome the Fifth Circuit.

Q. When did that conversation take place?

A. Early on in the litigation, early on when I was in the litigation, and we never discussed the facts of the case, we never discussed other than, this is not a gimme case, you better prove your case, and you better prove it sufficiently for me and for the Fifth Circuit.

Q. Do you know why he said that to you?

A. He was probably drunk and probably encouraged me to work harder than I was going to work otherwise, and please don't bring any BS in front of me in court.

Q. This is a judge who didn't like BS in court anyway, right?

A. It didn't take much to get him going. If you hit a nerve, he could be quite testy.

Q. What was your understanding of what he was saying to you?

A. Just what I told you. You better prove your case, and you better prove it sufficiently for not only me, but the Fifth Circuit Court of Appeals.

Q. Did you have any understanding that he had decided to rule in your favor and was just

telling you to build a good record for the Court of Appeals?

A. No. I didn't have that feeling.

Q. Why was he concerned about the Court of Appeals?

A. Apparently the Liljebergs had a long history of reversals in the Fifth Circuit Court of Appeals that I was unaware of when I signed on. Apparently they had judges recused, went to the Supreme Court, you know, just a whole bunch of litigation, and it never got past the Fifth Circuit. The Fifth Circuit, every time they would win a case, they would throw it out.

Q. Do you -- after the trial, it took about three years before there was a decision?

A. I don't know. If you say so.

Q. Your understanding it took a long time?

A. It took a while, yes.

Q. Do you have any understanding about why it took such a long time?

A. He told me that he didn't have a law clerk who could read all of the documents and all of the stuff to put a judgment together.

Q. Do you recall how you received a copy of his decision?

A. No.

Q. Was a copy brought over to your office by his secretary?

A. I don't know. I know it was a clerk copy that we got. I don't know how it got there or who brought it or whether we sent somebody to pick it up, I just don't know.

Q. It was while that case was pending that you had the fishing trip with Judge Porteous?

A. Right.

Q. In your mind, did giving him money as a result of his request at the fishing trip have any impact on the decision in the case?

A. I don't think so. I don't think it did.

Q. Did you have any intent that it would have an impact on the decision in the case?

A. No. I didn't have any intent that it have an impact on his decision.

Q. Or did you have any expectation that it would have an effect?

A. He was going to do what he was going to do no matter what anybody said, did, done. No, I had no expectations.

Q. You weren't going to influence how he came out at the end of that -- what his decision

was?

A. No, I was not by that, not by anything.

Q. During the -- let me just go back for a minute. When Judge Porteous stopped being a state court judge, did he have any more control over curatorships?

A. Not that I know of.

Q. That was just a state court issue, right?

A. Right.

Q. To your knowledge, did Mr. Creely continue to give Judge Porteous any money after he became a federal judge?

A. No.

Q. Not to your knowledge?

A. Not to my knowledge.

Q. When Judge Porteous became a federal judge, there was an investiture party?

A. Right.

Q. Did you contribute to the cost of that party?

A. We did, yes.

Q. The law firm did?

A. Yes.

Q. Did other law firms as well?

A. As far as I know.

Q. There was also a time when Judge Porteous's son was in Washington at an externship?

A. Yes.

Q. Did you contribute to that?

A. Certainly did.

Q. Did other lawyers contribute to that?

A. I don't know what other lawyers did. I really don't.

Q. How did that come about? How were you requested for money for that?

A. It wasn't by him, but I don't know -- it wasn't by him to me, but how, I don't know.

Q. There Was also a five-year anniversary party that Judge Porteous had. Do you recall that?

A. Yes.

Q. Did you contribute to that?

A. Yes.

Q. Was it by you or your law firm?

A. Law firm.

Q. And did other law firms contribute to that?

A. Not as far as I know, but I don't know everything. You know, it was a friend of ours' restaurant that it was at, and I think we got the whole bill.

MR. SCHWARTZ: Senator, if I may, I would request about a five minute break, so we can just see what other additional questions we have, and then we'll come back and finish up.

SENATOR McCASKILL: That's fine.

MR. SCHWARTZ: Five minutes.

(Recess.)

SENATOR McCASKILL: Counsel, you can go ahead and continue your questioning.

MR. SCHWARTZ: Thank you very much. I just have a few additional questions, sir.

THE WITNESS: Always do.

BY MR. SCHWARTZ:

Q. You mentioned a part of your trial team was a gentleman by the name of Levenson?

A. Yeah.

Q. Who was he and what role did he play in the trial?

A. Lenny handled some of the stuff in the Bankruptcy Court in front of Judge Braney, and he also handled the economist at trial, and helped the trial preparation and stuff. I mean, he did work.

Q. He took some witnesses?

A. Yeah.

Q. And your work during the trial, were you

handling witnesses?

A. Of course, yeah.

Q. Were you arguing motions?

A. Don Richard argued the motions. We felt it better that one lawyer was the lead lawyer, he was going to be the lead lawyer. We thought that more than one cook in the kitchen ruins the stew, so he was the lead.

Q. What about the pretrial motions, did he handle those as well?

A. Don handled those.

Q. Were those before the judge or the magistrate?

A. Some were before the magistrate, some were before the judge.

Q. Did you get any -- did your side get any special treatment from the judge in those pretrial motions?

A. Not that I know of. I don't think we won all of them, if that's what you mean.

Q. You won your share?

A. I deserved to.

Q. Were you familiar with an employee named Gary Raphael?

A. Yes.

Q. Who is Gary Raphael?

A. Gary Raphael was a friend of Judge Porteous. I think that Gary's wife and Tom's wife were very good friends, and one day I came to the office and there was Gary. Bob, how did -- what's the story on Gary? Tom asked us if we can hire him. I said, what can he do? I don't know. His wife's family is one of the biggest boat operators in south Louisiana, and we figured that by having Gary in the office, we would hopefully get some of their work.

Gary, I had absolutely no problems with Gary. Gary did everything I ever asked him to do. He was methodical and meticulous, and the stuff that you would hate to do, he would love to do, so Gary stayed with us for, I don't know, five years, four or five years.

Q. What was Mr. Creely's view of Gary Raphael?

A. I have no clue. He didn't like him, I know that. But I don't know what his view was.

Q. You didn't discuss it with him?

A. There was a bunch of things we didn't discuss, but that happened to be one of them.

MR. SCHWARTZ: Senator, those are all the questions I have for now, and I would like to turn

it over to the House to ask their cross. I would like, as we did this morning, to reserve a little bit of time at the end if there's time to do redirect.

SENATOR McCASKILL: Okay.

MR. SCHWARTZ: Thank you.

SENATOR McCASKILL: Congressman Schiff.

CONGRESSMAN SCHIFF: Thank you, Senator.

EXAMINATION

BY CONGRESSMAN SCHIFF:

Q. Mr. Amato, I want to follow up with you on the amount of the cash that was returned to Judge Porteous from the curatorships. In the testimony before the House, I asked you if the records indicated that the amount of curatorships over time approximated $40,000, would that indicate to you more accurately how much you think you would have given the judge over time between the two of you, and your answer was I would think we would give him something less than $20,000.

MR. CAPITELLI: Could I ask for a reference on the page, please?

CONGRESSMAN SCHIFF: Yes, I'm sorry, that's page 161 of the House transcript.

BY CONGRESSMAN SCHIFF:

Q. I then said, so something less than half the value of the curatorships?

And you replied yes, because we had to take out expenses, and, you know, when you get a curatorship, you put an ad in the paper and that costs so much money, and all that was deducted out before we got to a net fee.

MR. CAPITELLI: I'm sorry, we're not seeing the line. Is this on -- oh, you got it? I'm sorry, we see it now, apologize.

BY CONGRESSMAN SCHIFF:

Q. So, Mr. Amato, then, if the records indicate that the amount of the curatorships, the value was about $40,000, clearly it wouldn't be more than $40,000, right, that you and Mr. Creely would have given back to the judge?

A. No, if the curators were $40,000, he would get half of that.

Q. So that would be around $20,000?

A. Right.

Q. So something probably between ten and twenty thousand, is that fair to say?

A. Yes.

Q. And your further testimony before the House, you said that you didn't pay the judge with

checks, but, rather, with cash because that was part of the deceit; is that right?

A. I don't know if I said part of the deceit, but it was part of how it was done.

Q. Let me just see if I can find the question here.

Mr. Lundgren -- this is page 188. Well, I mean, I know you made a bad mistake, but why would you give him cash? Why would you not give him a check in accordance with the usual procedure of running a law firm?

Answer, from Mr. Amato, I have no further answer I can give, sir. I mean, we just did it that way.

Mr. Lundgren: Was it part of the deceit?

Answer: Yes.

A. Well, then, it was part of the deceit.

Q. Was that your testimony, Mr. Amato?

A. Yes.

Q. You were asked by Mr. Schwartz about taking other judges out to lunch or on hunting and fishing trips. Did you ever give any of these judges money back from any curatorships that they sent you to?

A. I didn't, no.

Q. Did you ever give them cash while they had a case under submission where you were a lawyer appearing on the case?

A. No.

Q. I'm sorry, could you speak --

A. No. No.

Q. You also mentioned that the -- providing this cash to Judge Porteous didn't influence, in your view, his handling of any case, but it did influence his handling of the curatorships, didn't it, in that he sent them to your office?

A. Yes.

Q. I take it he didn't send the curatorships to your office because you were a young lawyer trying to get established?

A. That's correct.

Q. He was sending them to your office because he was get something of the money back for it?

A. That's correct.

Q. And, in fact, in your House testimony, you were asked, wasn't this really a classic kickback scheme, and you said yes?

A. I think you asked me that question, yes.

Q. Your answer was, yes, it was a classic

kickback scheme?

A. Yes.

Q. You also mentioned earlier in answer to one of Mr. Schwartz's questions with respect to the curatorships, when Mr. Creely first came to you and told you that the judge wanted money back from the curatorships, that this was going to wind up bad. Do you recall that testimony?

A. Yes, sir.

Q. And I think you said that if it was found out that attorneys were involved in that, they could get disbarred, right?

A. Yes.

Q. Then you said something to the effect of, you don't know what happens to a judge when something like that is found out, right?

A. Yes, other than they were reported to the judiciary commission.

Q. So what you meant by that is you didn't know whether judges got disbarred, whether they got disrobed?

A. That's right.

Q. But you knew it would have an adverse consequence on the judge?

A. That's right.

Q. And I take it you would also understand that if that information came to light, it's not something that would have generally earned somebody a nomination for a federal judgeship?

A. You're correct.

Q. And during a Senate confirmation, if it came out that the judge was involved in a kickback scheme, how do you think that would affect their confirmation?

A. I don't think I'm in a position to answer that question, but I would presume that it would not be helpful.

Q. Now, in discussing the time when Judge Porteous was on the state bench and the curatorships, I think you also said that he didn't ask you for money, by that you meant he asked Creely for money?

A. Correct.

Q. But you acknowledge that you gave him money because half of the draw that was used to pay him was from you?

A. Correct.

Q. I think you also said that you were sure that you also gave money to Judge Porteous. Does that mean that you, although he didn't ask you, that

some of the times when you gave cash to the judge for the curatorships, you might have given it rather than Creely?

A. Yes.

Q. Is it also possible that the judge's secretary might have picked up the money?

A. Yes.

Q. And when you say you don't recall whether she came by to pick up an envelope one day, the reason that wouldn't stand out in your memory is there wouldn't be anything that dramatically unusual about that?

A. Well, Rhonda was a friend of ours and a friend of the secretaries in the office, and she would stop sometimes because the bridge was broken -- not broken, but there's a traffic jam on the bridge, stop and get coffee, you know, or pick up a picture, we went someplace and took some pictures, Rhonda would stop. It's not that she came every week, but seeing Rhonda in my office occasionally was not unusual.

Q. And because you were in fact making periodic cash payments to the judge, it also wouldn't have been unusual if she were the one to come by and pick it up?

A. I don't know if she picked up any, but I wouldn't doubt that she didn't -- or she did, rather.

Q. And from time to time after that initial conversation with Mr. Creely, Mr. Creely -- the initial conversation where he said the judge wanted some money from curatorships, Mr. Creely would come to you and say the judge wants more money from the curatorships?

A. No, his share of the curatorships.

Q. And then you would each take a draw and pay the judge?

A. Correct.

Q. Now, you mentioned both during testimony I think a little bit today that there were basically three reasons why you gave the judge cash after the fishing trip when he was on the federal bench and he asked you for money for the wedding on the fishing trip. I think you said one reason was friendship, one reason was you felt sorry for him, and one reason was he was a federal judge; is that correct?

A. Uh-huh. Yes, sir.

Q. And as I think you mentioned, when you broke it down, it was about 80 percent friendship and about 20 percent that he was a federal judge?

A. Right.

Q. Now, this was a case that you had put two years of work into, right?

A. At least.

Q. And during those two years, you worked almost exclusively on this case?

A. I worked a lot on this case. I had other cases that I worked on, but this was my primary case that I was working on, yes.

Q. And this was a contingent fee case, right?

A. Correct.

Q. So if you didn't prevail, you got nothing from this case?

A. That's correct.

Q. So -- and for this work, because the case itself was worth tens of millions of dollars, your firm stood to gain anywhere from $500,000 to a million dollars?

A. Probably, if we would have been a hundred percent successful.

Q. So you're on a fishing trip with the judge who's sitting in a pending case where you stand to make $500,000 to a million, and he asks you for cash; is that right?

A. That's correct.

Q. Would you have been concerned if you found that other attorneys in the case had been giving him cash under the table?

A. Would I have been concerned?

Q. Yes.

A. I don't know how I would know about it.

Q. Well, if someone told that you one of the other attorneys in the case was giving the judge cash under the table, wouldn't that concern you about the judge's partiality?

MR. CAPITELLI: If you had heard that.

THE WITNESS: If I had heard that?

CONGRESSMAN SCHIFF: Yes.

THE WITNESS: I always thought no matter who did what, he was going to do what he thought was the right thing. I mean, I just -- I don't know anything about anybody else doing anything other than what I've testified to.

BY CONGRESSMAN SCHIFF:

Q. I'm not suggesting, Mr. Amato, that anyone else was giving the judge cash, but if you had major litigation before a judge, wouldn't it concern you if one of the other parties or their lawyer was giving the judge cash under the table?

A. Of course it would concern me. But it also concerned me that somebody's marrying into the judge's family, that he practiced at the old law firm with the judge, there's 20 things that concerns you as a trial lawyer.

Q. And that's why you have a motion to recuse if the relationship is too close, right?

A. Yes.

Q. And in this case, there was a motion to recuse made by opposing counsel, and during that hearing, the judge explained how he understood the standard for the recusal motion, correct?

A. Right. I think he was -- yes.

Q. And do you recall the judge taking issue with the suggestion that he had gotten a campaign contribution from you?

A. Yes, and if you would like a short explanation --

Q. You know, I don't need a short explanation, actually, because I have limited time, but you do recall the judge taking issue with the suggestion that you had given a campaign contribution?

A. Right.

Q. And he, in fact, told the other attorneys

they should have done their homework better because this was a contribution to a general judges fund?

A. That's correct, that's the short story.

Q. And while he was making this show for the other counsel that they should have done their homework better, he didn't tell them anything about the approximately $20,000 in curator fees that you and your partner kicked back to him, did he?

A. No, he didn't tell them anything about the curatorships.

Q. Do you think that was misleading, Mr. Amato, for him to pound his chest and say I never got any campaign contributions, but failed to tell them that he got about $20,000 in cash under the table?

A. Yes.

Q. So you don't feel he was being honest during that hearing, do you?

A. I don't think he was being honest.

Q. Do you recall him saying during the recusal hearing, but don't misstate, don't come up with a document that clearly shows well in excess of $6700, with some innuendo that that means they gave the money to me. If you checked your homework, you would have found that was a Justice For All program

for all judges in Jefferson Parish. I'm sorry, I'm reading from page 156 of the House transcript. But go ahead, I don't dispute that I receive funding from lawyers.

And I asked you in light of the fact that he received thousands of dollars from you, wasn't that a misleading statement. And your answer was, probably because again, Mr. Schiff, I don't know if he was referring to the Justice For All collection or something different.

I then went on, well, if the judge was taking issue with opposing counsel for suggesting you had given him money that in fact went for a different program, at the same time, in fact, received thousands of dollars from you, wouldn't it be misleading for the Court not to reveal that, and your answer was yes?

A. I think that's what I answered.

Q. That's still your testimony today?

MR. CAPITELLI: Yes.

THE WITNESS: Yes.

BY CONGRESSMAN SCHIFF:

Q. I think both today and in your testimony before the House, you said one of the reasons that you took this Liljeberg case was that you thought

the facts were in that party's favor, and that the judge was not unfriendly to you. Do you recall that testimony?

A. I don't recall it, but I'm sure it sounds like something I would say.

Q. On page 208, I asked you, you used the word unfriendly, that you thought you had a good chance to prevail in the case because the judge was not unfriendly. Similarly you mentioned that you thought maybe one of the reasons you were brought into the case was because of the wide knowledge that you had a friendship with the judge. Part of that friendship was providing him with thousands of dollars, wasn't it?

And your answer was, I think Tom and I would have been friends no matter what, but I'm sure he appreciated our generosity or our friendship shown that way.

MR. CAPITELLI: Can you give us a line? We're missing something.

CONGRESSMAN SCHIFF: Page 208 into 209.

MR. CAPITELLI: 208 into 209, okay.

CONGRESSMAN SCHIFF: The Bottom of 208.

MR. CAPITELLI: The bottom of 208, yeah.

THE WITNESS: Okay.

BY CONGRESSMAN SCHIFF:

Q. So part of the reason you thought you would prevail is that you thought the case had merit and part was your friendship with the judge, right?

A. More so with the merit than with the friendship.

Q. But partly based on the friendship, right?

A. Of course.

Q. And part of that friendship, you testified earlier, was the fact that you had given him thousands of dollars, right?

A. Yes.

Q. And you testified earlier that you're sure he appreciated your generosity or our friendship shown that way, right?

A. Yes.

CONGRESSMAN SCHIFF: I think I'll turn it over to my co-counsel to finish up.

MR. DAMELIN: I just have a few quick questions.

EXAMINATION

BY MR. DAMELIN:

Q. Mr. Amato, just to clarify one thing, at least according to my notes, when you would be asked

some questions in connection with the recusal hearing, my notes reflect at the time of the motion to recuse, I had not given money to Judge Porteous.

That's not correct, is it? You had, in fact, given him money through the curatorship scheme, isn't that correct?

A. Where would I testify to that?

Q. I'm saying from my notes today when Mr. Schwartz was asking you questions about the recusal.

MR. CAPITELLI: I don't think my client testified that way, but I'll be glad for him to clarify it.

BY MR. DAMELIN:

Q. Just to be clear on the record, at the time of the recusal hearing, you had given Judge Porteous money, had you not?

A. From the curatorships?

Q. Correct.

A. Right.

CONGRESSMAN SCHIFF: I think, and correct me if I'm wrong, that when you said earlier that you hadn't provided money to the judge, you were referring to the money you gave on the fishing trip, that had not happened yet at the time of the recusal --

THE WITNESS: That's right. Yes.

BY MR. DAMELIN:

Q. And in connection with that recusal hearing, you have testified that you believed that the judge should have recused himself from the case; is that correct?

A. Correct.

Q. Now, while the case was pending, while the Liljeberg case was pending, after trial under advisement, did the following things, to your knowledge, take place, in your personal knowledge and involvement: In June '99, the judge made a request you to for money and which you subsequently paid him?

A. I gave him money to help with his son's wedding, yes.

Q. And during that period of time, you had frequent lunches with Judge Porteous in which almost every situation you paid?

A. I had lunch with Judge Porteous on a regular basis, as I had for 25 years, and I usually paid.

Q. You paid. But this -- while the case was under advisement?

A. Yes, sir.

Q. Okay. Also while the case was under advisement, your law firm paid for the -- a party to celebrate his five years on the bench?

A. Yes.

Q. While the case was under advisement, you made a cash contribution to support his son's externship in Washington, D.C.?

A. I don't know when that externship took place, I really don't.

Q. I think the record reflects it was in the early part of 1999. Do you remember making a contribution for the externship?

A. I do recall making a contribution to the externship. I don't recall when it was.

Q. Also while the case was under advisement, did you have conversations with Judge Porteous about the case?

A. I did, but I don't recall what they consisted of other than --

Q. That's okay. And also the money you gave Judge Porteous, in your various testimonies, you make reference to, can you give me, can you lend me, can you make it happen, the money, this was on the fishing boat, okay?

A. Right.

Q. But, in fact, you never expected to be paid back that money you gave him, did you?

A. No, but there's always hope.

Q. Okay, but you never expected it?

A. No, I never did.

MR. DAMELIN: I believe that's all the questions that I have.

SENATOR McCASKILL: Counsel?

MR. SCHWARTZ: We do have some redirect.

EXAMINATION

BY MR. SCHWARTZ:

Q. Mr. Amato, all of the information about -- that you received about the relationship between the curatorship and money given to Judge Porteous, did that all come from Mr. Creely?

A. Yes.

Q. Did you have any independent communication with Judge Porteous about that?

A. Never talked to the judge once about curator cases.

Q. So all of the information you have is from Mr. Creely?

A. Correct.

Q. You would normally -- you and Mr. Creely would normally withdraw cash from your draw accounts

at the end of each week?

A. Yeah. Yes, sir.

Q. And you would use those for whatever purpose you wanted?

A. Well, mine went usually to my wife to run the household, since she opened her first checking account last week.

Q. So it was fairly normal for you to withdraw cash?

A. Yes, that's something that we did since we were young and starving.

Q. The time of the curatorships and the relationship that Mr. Creely informed you of between the curatorships and the money that he gave to Judge Porteous, that was all during the time that he was a state judge; is that correct?

A. Yes.

Q. And that was some years before the Liljeberg case came to him as a federal judge?

A. As far as I know, yes.

Q. And during the time that he became a federal -- as -- when he became a federal judge, all through that time period, other than the fishing trip, do you know of any money that you or Mr. Creely gave to the judge?

A. No, other than -- did he -- that they asked me about the party and the externship.

MR. CAPITELLI: You're referring to the issues that Mr. Damelin brought up?

THE WITNESS: Yeah. Other than that, no.

BY MR. SCHWARTZ:

Q. But no cash money in apparent relationship to the curatorships after he became a federal judge; is that correct?

A. Not as far as I know.

Q. Just to clarify your testimony, you don't know whether Rhonda, who was -- Rhonda Danos, who was Judge Porteous's secretary, came -- picked up cash or not, is that correct, from your office?

A. I don't recall her doing it. I'm not saying she didn't do it. I just don't recall.

Q. You don't know either way?

A. I don't know either way.

Q. You mentioned that part of your reason for giving the $2000 to Judge Porteous, part of the reason was because he was a federal judge?

A. Right.

Q. Was part of the reason because he was a federal judge on your case, or just because he was a federal judge?

A. I think just because he was a federal judge.

Q. Did the fact of the case before him have any impact on your decision to give him money?

A. Negligible, no.

Q. Negligible?

A. (Witness nods head.)

Q. You've said that you would have no concern, you would have -- do you feel -- let me restate the question. I apologize.

You testified on cross that no matter what the judge did -- I'm sorry, if someone else gave the judge money, were you concerned about whether or not it would have an impact on his decisions as a judge?

A. I don't think I can answer that question, what impact what somebody else did for the judge would have.

Q. You've known him for 40 years. Do you think --

A. Close.

Q. Do you think it would have an impact on his decision?

A. I don't think it would.

Q. Why not?

A. Just because of who he is, just because I've seen him in court too many times. I've tried cases with him, I've tried cases against him, I've tried cases before him, you know. No. He usually, as far as I know, he always ruled as he thought correctly.

Q. And whether or not someone had given him money would have no impact on that decision?

A. Not that I could tell.

Q. That's your experience?

A. That's my experience.

Q. And your expectation?

A. And hopefully my expectation, yes.

Q. So when you gave him money that he requested after the fishing trip -- at the fishing trip, did you have any expectation that it would affect the decision before him?

A. No, I didn't have any expectations.

Q. Do you think it had any impact on his decision?

A. No.

Q. In fact, you gave him that money because he was a friend and he was very upset; isn't that correct?

A. Yes.

Q. It may have been a foolish decision, but not one --

A. Oh, it's a decision I'll regret until the day I die.

Q. But it's not one that you made because of the case before him?

A. No.

Q. You testified that you had taken the case in part because of the facts, in part because it was a not unfriendly judge, and you've explained what you mean by not unfriendly judge?

A. Right.

Q. Do you think your friendship with him had any impact on his decision in that case?

A. I think he ruled based upon the evidence that was in front of him, irrespective if I would have been there or not.

Q. So the answer to my question is no?

A. No.

Q. The answer to the question is no, that's correct?

A. Is no.

Q. Okay. You testified that you had had some discussions with Judge Porteous while the case was pending. Did any of those discussions deal with

the substance or merits of the case?

A. No.

Q. Did you consider them to be improper ex parte communications?

A. Yes.

Q. I'm sorry?

A. Yes.

Q. Yes, they were?

A. I considered them that. I didn't participate.

Q. I'm sorry?

A. I did not solicit any information from him while the case was going on as to how are you going to rule, what should I do, what should I not do, you know, no, I never did.

Q. But the conversations you had with him, did you consider them to be improper ex parte communications?

A. No, I did not.

Q. And why is that?

A. Well, I mean, the guy's been my friend forever, and we've done a lot of things together, and the last thing a bunch of lawyers want to do is get together and talk about the law, and that was not in the program is to talk about the Liljeberg

case.

Q. But occasionally, the Liljeberg case came up?

A. I'm sure it did. I mean, you know, but it was in passing, how you doing? Fine, you know. Getting everything ready? Yep, that kind of stuff.

Q. But in your view, those conversations were not improper?

A. No.

Q. And not ex parte communications?

A. No.

MR. SCHWARTZ: That's all the questions I have, Senator.

CONGRESSMAN SCHIFF: I just have a few.

EXAMINATION

BY CONGRESSMAN SCHIFF:

Q. Mr. Amato, you testified earlier that part of the reason you took the case was the merits and part was your friendship with the judge, those were two of the reasons why you thought you would succeed, am I right?

A. Well, yes.

Q. And you testified earlier that part of why you thought your friendship was important is that you had shown him generosity in the cash you

provided him, right?

A. I think it went more than that, but yes.

Q. And part of that generosity you showed on that fishing trip when you said you would give him the two thousand or $2500 in cash he asked for; is that correct?

A. Right.

Q. I think you testified earlier that you stood to make half a million to a million on this case, right?

A. I sure was hoping to.

Q. Spent most of two years working on it?

A. Right.

Q. And are you saying that the fact that he was the judge presiding on this case never entered into your mind when he asked you for money?

A. I think I've answered that, but it did enter my mind.

Q. So it did enter my mind?

A. Sure.

Q. So when you say 20 percent --

MR. CAPITELLI: Just to clarify, I think his answer was that it was negligible. He did say that it entered his mind even on previous questions from the counsel.

CONGRESSMAN SCHIFF: Well, let me ask the question again.

MR. CAPITELLI: Okay.

BY CONGRESSMAN SCHIFF:

Q. Are you saying when you stood to make $500,000 to a million dollars on a case under submission before this judge, when he asked you for cash, the case never entered into your mind?

A. The case entered into my mind, and -- it did. I gave it a great deal of consideration not to do it, and I wish I wouldn't have, but I did it more so out of friendship and feeling sorry for the poor broke down --

Q. More so out of friendship than out of the fact you had a $500,000 to a million riding on it?

A. I've handled a lot of cases over the years, and, yeah, that would have been a nice fee, but it wasn't going to make or break me.

Q. That wasn't my question. Did the fact that you stood to make a lot of money on this case influence your willingness to give him the $2500 or $2,000 he asked for?

A. Yes.

CONGRESSMAN SCHIFF: I have no further questions.

SENATOR McCASKILL: Okay. Thank you all very much.

(Whereupon, at 3:11 p.m., the taking of the instant deposition ceased.)

CERTIFICATE OF REPORTER

I, ANN L. BLAZEJEWSKI, RMR, CRR, the Notary Public before whom the foregoing deposition was taken, do hereby certify that the witness was duly sworn by me, that the testimony of said witness was recorded stenographically to the best of my ability and thereafter reduced to typewriting under my direction, and that the transcript is a true record of the testimony given by such witness.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2010.

_____

My Commission Expires:

October 31, 2013

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

- - -

IMPEACHMENT TRIAL COMMITTEE

- - -

IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.

PRE-TRIAL DEPOSITION OF LOUIS MARCOTTE

- - -

C-L-O-S-E-D H-E-A-R-I-N-G

Washington, D.C.

August 2, 2010

IMPEACHMENT OF G. THOMAS PORTEUS, JR.

PRE-TRIAL DEPOSITION OF LOUIS MARCOTTE,

CLOSED HEARING

- - -

MONDAY, AUGUST 2, 2010

United States Senate,

Impeachment Trial Committee,

Washington, D.C.

The pre-trial deposition of Louis Marcotte convened at 9:04 a.m., in Room SD-215, Russell Senate Office Building, Hon. Orrin Hatch, Vice Chairman of the committee, presiding.

Present: Senator Hatch, Vice Chairman; Congressman Schiff, House Managers; Philip Tahtakran, counsel for Congressman Schiff; Mark Dubester, counsel for House Managers; Jonathan Turley, Counsel for Respondent; P.J. Meitl, counsel for Respondent; Martin Regan, Attorney for Deponent.

Staff Present: Patricia Bryan, Senate Legal Counsel; Lake Dishman, Professional Staff Member, Impeachment Trial Committee; Justin Kim, Counsel, Senate Impeachment Trial Committee; Erin Johnson, Chief Clerk, Senate Impeachment Trial Committee; Thomas L. Jipping, Counsel for Senator Hatch and Staff Director, Senate Impeachment Trial Committee.

SENATOR HATCH: In the matter of the impeachment of Judge J. Thomas Porteous, Jr., the Senate Impeachment Trial Committee has authorized this pretrial examination at the request of Judge Porteous. Before swearing in the witness for this examination, why don't each of us introduce ourselves for the record. I am Senator Orrin Hatch, Vice Chairman of the committee.

MR. JIPPING: Tom Jipping, counsel for Mr. Hatch.

MR. DUBESTER: Mark Dubester, D-u-b-e-s-t-e-r, and I work for the House Impeachment Task Force.

THE WITNESS: I'm Louis Marcotte.

MR. TURLEY: Jonathan Turley. It's T-u-r-l-e-y, and I am counsel for Judge Porteous.

MR. MEITL: P.J. Meitl, M-e-i-t-l, and I'm counsel for Judge Porteous as well.

MR. PAHTAKRAN: I'm Philip Tahtakran, counsel for Congressman Schiff.

CONGRESSMAN SCHIFF: Representative Adam Schiff, House managers.

MR. DISHMAN: Lake Dishman with the Impeachment Trial Committee.

MS. BRYAN: Patricia Bryan with the Office

of Senate Legal Counsel.

MR. KIM: Justin Kim, counsel to the Senate Impeachment Trial Committee.

MS. JOHNSON: Erin Johnson with the Senate Impeachment Trial Committee.

SENATOR HATCH: The witness at the pretrial examination is Louis Marcotte. Mr. Marcotte, I would like you to please rise and raise your right hand for the administration of the oath. Do you swear or affirm under penalty of perjury that the testimony you shall give shall be the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: Yes, I do.

SENATOR HATCH: As the parties have already been informed, the examination will last up to three hours, no more than that. It is my intention that counsel for the House of Representatives will have the final 20 to 30 minutes. So that means counsel for Mr. Marcotte will have the first allotted time. Now, I would appreciate counsel's cooperation in that division of time. I expect to continue right through the time, divided as I just described, but if the witness needs a short break, just let me know.

THE WITNESS: Sometimes I have to use the bathroom a lot.

SENATOR HATCH: That's right. I understand. Also unlike ordinary depositions you may be accustomed to, I highly discourage objections about the form of the question or questions. Unless the question is actually confusing to the witness, I'm not going to sustain such objections. I expect this to run without a lot of rancor, without a lot of difficulty. And if the court reporter is ready, why don't we just begin.

MR. TURLEY: Thank you, Senator Hatch.

EXAMINATION BY COUNSEL FOR JUDGE PORTEOUS

BY MR. TURLEY:

Q. Thank you, Mr. Marcotte. I want to note for the record that your attorney has not appeared yet but are you comfortable in proceeding at this point?

A. Yes, I am.

Q. And can you give me your attorney's name for the record?

A. His name is Martin Regan.

Q. And can you spell his last name?

A. R-e-g-a-n.

Q. And he is planning to be here this

morning?

A. Yes, he is. I mean, he was here with me. I just don't know. Maybe he's in -- I don't know. Maybe something happened in the hotel room but this is very unlike him.

Q. Sure. Mr. Marcotte, have you been deposed before?

A. Yes, I have.

Q. I'm going to skip a lot of the usual preparatory depositional instructions since you've done it before but I would like to emphasize two things. One is if you can wait for the question to be finished so that we don't have any confusion as to what you're answering to.

A. Okay.

SENATOR HATCH: And I would appreciate it if you would speak up just a little bit.

THE WITNESS: Yes, sir.

BY MR. TURLEY:

Q. And two, I would like if you would be so kind to verbalize your answers because the court reporter, Mary Grace, is not going to be able to describe your physical reactions.

A. Okay.

Q. I would like to start out with some

threshold questions in this case and the first one is, did you ever give cash directly to Judge Porteous?

A. No, I did not.

Q. Did you ever make campaign contributions to Judge Porteous?

A. No, I did not.

Q. Did you ever set a bond with Judge Porteous after he became a federal judge?

A. I've set bonds after he was confirmed.

Q. I'm talking with Judge Porteous.

A. With Judge Porteous, after he was confirmed.

Q. I want to make sure I understand this. So you had bonds in federal court under Judge Porteous?

A. I guess the question would be once he's confirmed, he's still on a State bench until the Senate votes that he is a Federal judge, so he was confirmed and he's done bonds at that point.

Q. I appreciate that and that's a valid distinction. My question was, after he became a judge, did you have any other bonds with him, after he became a Federal judge?

A. No, I did not.

Q. Thank you. Did you ever give cash to any

other judge?

A. Yes, I gave cash to judges.

Q. And who were those judges?

A. Judge Gucobbie, Alan Green, Roy Cascio, Steve Windhorst, Judge Grant, who made copies of the $100 bills that I gave her and put it in the folder. So it was like they had that on the record too. She disclosed it in her finance report but it was $100 bills.

Q. And how about Judge Bodenheimer?

A. Bodenheimer, I gave him a check.

Q. Now --

A. And --

Q. I'm sorry, go ahead.

A. And also Pat McCave. Mr. Dotson who was a justice of the peace. Eugene Fitchue, justice of the peace. I would have the list but there is probably more, too.

Q. Were all of these payments for campaign contributions or were some of them for other things?

A. Well, they were cash payments and they were for campaign contributions. But I guess by giving the cash, me and the judge decided that we didn't want the whole world to know that they were getting cash for a few reasons. Some of the reasons

were, you know, bondsmen across the country, they're not -- I would say they are not -- they're known as being sleazy. So a lot of judges didn't want to take the money and put it on their campaign report, taking money from a bail bondsman. That was one reason. Another reason, the judges wanted to put the money in their pocket instead of putting it in their campaign fund. But there was always a campaign -- I mean, there was always a fund raiser and I always received tickets for the money.

Q. Did you ever pay any judge cash clearly for their personal use?

A. Only one, and that was George Gucobbie. I went to Las Vegas with him and he asked me to borrow five -- that's when I went with Porteous as well. And I roomed with Gucobbie and he asked me to loan him 500 and he never did pay me back.

Q. Any other payments to judges that were given to them as individuals, just as a gift?

A. Without a campaign contribution?

Q. Correct.

A. No. There was one, Juan Perez, he was a justice of the peace and he borrowed $2,500 from me and I took a promissory note for the 2,500 that I loaned him and he never did pay me back. He actually

lost the election. And I don't know if he would have ever paid me back but I did have a note.

Q. Okay. Let's go back to, when did you start in the bail bonds business?

A. Probably 1979.

Q. And you started as a bail bondsman?

A. Yes, I worked for someone -- well, '78. I worked for someone and then he died and I opened up right across the street from the courthouse and that was my flagship store and that's where I started.

Q. And who was that person you worked for?

A. His name was Adam Hebert.

Q. And Hebert is H-e-b-e-r-t, correct?

A. Yes, sir.

SENATOR HATCH: Let me interrupt for a minute. I'm kind of uncomfortable with you going ahead without your counsel under these circumstances but I hate to not go ahead, too. I mean, we have a right to go ahead.

MR. DISHMAN: We've asked and no one has heard from him. He hasn't checked in here at the Capitol at all. The information desk, the Visitor Center folks haven't heard from him.

THE WITNESS: Then maybe we should -- if something is wrong -- this is not Martin at all.

He's up real early. I mean, maybe something happened in the room, do you know?

MS. BRYAN: Do you have a phone number for him?

THE WITNESS: He had some posts put in his teeth and he was taking Darvocet so I don't know if -- maybe something is wrong with him in the room.

MR. DISHMAN: Were you able to call him?

THE WITNESS: I called his room and I called him about three or four times on the cell phone and he didn't answer.

MR. TURLEY: We would be fine accommodating with delaying, as long as we don't lose the time obviously. But if we don't lose the time, we would be happy to delay it.

MS. BRYAN: Could you give us his cell phone and the hotel room and we could try to get ahold of him?

THE WITNESS: It's 504-554-2369.

MR. DISHMAN: What's the hotel you're staying at?

THE WITNESS: Capital Suites? I don't know, guys.

MR. DISHMAN: Do you have a room card with you?

THE WITNESS: I sure don't.

MR. DISHMAN: We can find that out.

SENATOR HATCH: Let's just delay for just a minute.

MR. DUBESTER: One more possibility is his secretary or legal assistant in New Orleans is always in touch with him by all sorts of secret ways that I can't --

MR. TURLEY: I'm just going to get us off the record. It's now, for the record, 9:15.

MR. KIM: I've been keeping time. You've used just under seven minutes.

MR. TURLEY: Thank you. So we're going to be going off the record at this point in light of the counsel issue.

(Discussion off the record.)

BY MR. TURLEY:

Q. We're going back on the record and once again the witness has indicated that he's prepared to go forward without counsel and we want to reaffirm from our side that we don't want you to feel uncomfortable.

A. No problem.

SENATOR HATCH: And we have made it very clear from the Senate side that we would prefer to

have your counsel here but if you're willing to proceed, we are as well.

THE WITNESS: Okay. I'm ready.

BY MR. TURLEY:

Q. We were talking about Mr. Hebert. You said that you started working around 1978, is that correct?

A. Yes, '78. I worked for him like three years and then he died and then I opened my own office, the flagship office, in Jefferson Parish.

Q. Am I wrong, there was a reference to starting as a janitor in the record. Was that correct?

A. Yes, I started for Mr. Hebert as a janitor.

Q. Was that in 1978?

A. Yes, '78, '79.

Q. So how long were you a janitor then?

A. I cleaned his building and cleaned his office and he said, let me put you in the bond office and see what you can do there.

And I started working there and I did a real good job for him and then he died and I just opened up my own -- I was working for him about a year after that and I knew the business at that point

and then I opened up my own office across from the jail in Jefferson Parish.

Q. So you started in '78 and you worked a couple of years, you said, as a janitor?

A. Janitor/bail bondsman.

Q. Did you know that Mr. Hebert would regularly take people out to lunches in the business when you were working for him?

A. Yes, he did.

Q. Did that include lawyers and judges?

A. Lawyers and judges, DAs.

Q. Did you sometimes go to lunch with him on those occasions?

A. No, they kind of kept me away from that. And he took a lot of people fishing. You know, basically that's what -- he had a big houseboat and he took a lot of judges and people fishing.

Q. And would he generally pay for those types of things?

A. He paid for those types of things and a lot of other things, washing machines, dryers, you know, shrimp, you know, hundreds of pounds of shrimp and kind of without -- and paid for all the elections and paid for all the signs and put them all up for each judge that was running at that time.

I think around that time, they only had three or four judges in that parish.

Q. And you said he also would do this sometimes for the DA?

A. That's what he said. I can remember one distinct time that he said, you know, I'm in the judge's office and he told the judge, hey, judge, I was out with Momoletious all night -- I mean, was fishing with Momoletious all weekend and I would look at him, well, I don't know how you were fishing with Momoletious, you were with me all weekend.

So he would show that strength at the judge so he could get what he wanted. But he did wine and dine and buy a lot of stuff for judges in those days.

Q. And when you said he would throw that strength, is that something bondsmen would do in terms of representing that they have powerful friends?

A. Yes.

Q. When did you first meet Judge Porteous?

A. You know, it's a long time ago. Probably 16, 17 years ago.

Q. Do you remember the context in which you met him?

A. Well, this is how it started with Porteous is they had a guy out of Barnett who was a bail bondsman.

I don't know if he was a bail bondsman. He was a hustler. I don't know if he ever held a license or maybe he did at some point but he always lost it, never kept up with it, never filed the fees to renew it, never did the CE, so he was kind of -- maybe he had it for a little bit, maybe he didn't, but basically he was a hustler and his daddy was Ralph Barnett, an attorney, and Ralph, in those days, was close with Adam Hebert so Adam Hebert had all the business.

So Adam Hebert used to refer all the business to Ralph. So, you know, when the money was flowing in that area, they had the juice.

Q. When you say they had the juice, what do you mean by that?

A. You know, to get the bonds cut, to call judges at 3:00, 4 o'clock in the morning, to get them set, to get them out immediately, you know, it was Ralph and Adam's dad who is a lawyer and Adam Hebert.

Q. Now, did Judge Porteous also know Ralph?

MR. DUBESTER: I would like to object only to get Mr. Marcotte to finish the question. Your

question was how did Mr. Marcotte get to know Judge Porteous. I don't think he ever -- he started talking about something else.

MR. TURLEY: I was satisfied with his answer. If he hasn't finished one of my answers, I'll definitely ask him a follow-up.

BY MR. TURLEY:

Q. But could you tell me, do you --

A. And I was getting to -- I'm sorry. I was getting to how I became close with Porteous through that angle.

Q. I want to go back a little and try to dice it up so I better understand it.

A. Okay.

Q. Did Judge Porteous also know Ralph Barnett?

A. Yes, absolutely, because Porteous was in the DA's office and Ralph played tennis with most of those guys in the DA's office and he was close with Marion Edwards and all those guys.

Marion Edwards was a DA. Now he's a judge. Anyway, he was close with everyone in the DA's office.

Q. And at some point, Adam Barnett then worked with you on bonds, correct?

A. He worked with me on -- actually, what I -- see, before they put taxes in at the jail, we didn't need judges to cut the bonds. We would just write the bonds, if the people didn't have all the money, we would set them up with a balance.

But once they put the taxes in, they started taxing us 30, 40 percent on the bonds, then we had to get the bonds cut because, you know, there was a lot of cost involved at that point. And so at that point, we engaged Adam to go get the bonds reduced with the judges.

Now, Adam was a little rich kid from Metairie. He was close with all the lawyers and the judges. His dad was the biggest lawyer in the town at the time and he could go to the judges and get the bonds cut and he knew Porteous. He was close with Porteous. He was playing golf with Porteous and he could get the bonds cut.

Q. And when you started working with Adam, is it correct to say you were new to the bond business at that point?

A. Yes, I was. I think Adam was -- he may have been -- I don't know. We probably started around the same time.

Q. Adam Barnett I'm talking about.

A. See, Adam worked for Adam Hebert's nephew and I worked for Adam Hebert. He worked for Gerald Hebert in New Orleans and I worked for Adam Hebert on the west bank side of the river.

Q. And did you have a contractual relationship with Adam Barnett during the period yourself?

I mean, did you ever develop a direct contractual relationship between your business and Adam Barnett?

A. I think at some point he may have been licensed through us but again, he wouldn't go through the CE, the continuing education, and he would never follow the rules so his license was always suspended or for whatever reason, he just was lazy and he was a procrastinator and he wouldn't follow the rules.

Q. But I just want to make sure I understand. So sometimes you would have bonds in your business and then Adam Barnett would handle those bonds for you in going to the judges, is that right?

A. Right. He would go to the judges and get them reduced and I would pay him a fee for getting them reduced out of my commission on the bonds.

Q. And at some point you stopped using Adam Barnett for this purpose, is that correct?

A. Well, the reason I stopped using Adam Barnett is because Adam wore out his welcome with most of the judges because when his lips were moving, he was lying.

So he was lying to all the judges and he got Porteous in a cross by putting up property that wasn't worth the amount of bonds on, you know, not hundreds of people, but maybe 20 or 30 people, they put up the same property.

So at some point Porteous made the paper for that, and he also made the paper, because he let somebody out for Adam; the guy burglarized everybody's house in his neighborhood. So at that point, Porteous said, I can't fool with this guy. He's going to get me in trouble.

MR. TURLEY: I would like to make this Exhibit 1, if you would.

(Exhibit No. 1 was marked for identification.)

BY MR. TURLEY:

Q. Mr. Marcotte, I'm handing you a document that's been marked Exhibit 1 and this is, I would represent to you, an article from the Times Picayune.

A. Yes, sir.

Q. And on the very top, it has the markings

FD-350 (Rev 5-8-81). And in the opposite corner, it has HP Exhibit 119(z). Do you see that document before you?

A. Have I seen it before?

Q. No, do you have that document before you that I just described?

A. Yes, I can see some of it. I don't have my glasses with me but I can see a little bit.

Q. That's two of us. Maybe we can help each other.

The headline of this article, as you can read, is "$80,000 house is used as surety for $300,000 in bonds." Now, if you look over to the right corner, you'll see the date edition is 9/14/93. If you look over --

A. Excuse me?

Q. Oh, is that your lawyer?

A. It may be him.

Q. Do you want us to go off the record so you can answer that call?

A. I don't think that's him. I'm sorry.

Q. That's okay. That's okay.

A. But I'm leaving it on only because if he calls. Is that okay?

Q. Yes. As long as it's okay with the

Senator.

Do you see that date is 9/14/93? Do you see that over in the corner? It's actually right around here. It shows the date of the article right here.

A. Right.

Q. Do you remember this article?

A. Yes. It's been a long time but, again, I just told you about it but verbatim, I don't really remember every step that was in it, you know, but I do remember the article and I remember this was kind of the straw that broke the back with Adam and Porteous.

Q. Excellent. So when you said that there was a change where you stopped using Adam Barnett as much, this was the event that you were describing, this date?

A. I think this was one of them. I think there was, you know, a few other events that maybe didn't surface in the paper but Porteous felt real uncomfortable about what happened with some other cases.

Q. Now, let me ask you, before this time, which is 9/93, did you have a close relationship with Porteous or was it primarily Adam Barnett that had

that relationship?

A. Adam Barnett had the relationship with Porteous. Adam Barnett had the relationship with Porteous.

I never could get a relationship with Porteous at the time because of the Keith Kline case where supposedly he took some money and people were saying stuff in my office that Keith Kline was wired and he somehow -- Bodisque leaked it back to Porteous and at that point, from the time that he took a State bench until now, until this time, he didn't have anything to do with us.

Every time I had a bond or something, he would kind of like (gesturing).

Q. Did you have any personal knowledge of the judge taking money in that Kline case?

A. No, I didn't because at that point, I didn't have any -- I was never in touch -- I was using lawyers to get to him.

Q. So is it correct to say that after this controversy, you began to have more dealings directly with Judge Porteous?

A. Yes, after this -- we were fixing his car. Adam was fixing his car and cars, his son's cars, putting tires and stuff, and I was giving -- Adam and

I would share the costs of the car but Porteous didn't know it was coming from me. He just thought Adam was doing it. And Adam was playing golf with him and Gucobbie.

Q. So then after 9/93, did you start to have more lunches with George Porteous?

A. Yes. After Adam burned out his bridge with Porteous, then -- when Adam was maybe playing golf or something else, we started dealing with Rhonda. Because, you know, maybe Adam was playing golf with Porteous, and we had bonds and Porteous was on the golf course with Adam and that's how we started getting close to Rhonda because we were starting to see Rhonda every once in a while.

Q. And what was Rhonda's last name?

A. Danos.

Q. Had you bought any lunches for Judge Porteous before this or was it pretty much after this that you did the lunches?

A. I probably -- you know, it seems like I bought lunches, again, like the cars through Adam, I paid half and Adam paid half and Adam took him to lunch.

Q. And let me ask you a question. You've been very helpful sort of describing these

relationships. Gretna itself, is that a small town?

A. The parish of Gretna or the city of Gretna?

Q. The city.

A. The city is probably 50,000 but the parish is probably 500,000. And even though it's a parish jail in a city municipality, but everyone from the whole parish went to the jail in Gretna but it was a Jefferson Parish jail.

Q. Now, was it your experience that lawyers and judges and bondsmen tended to all know each other in this community? It was a relatively close-knit community?

A. Yes, it was.

Q. So was it common for lawyers and judges to go out to lunch with each other and to socialize with each other?

A. I would say yes.

Q. Now, Judge Porteous is -- when Judge Porteous first started to deal with you directly, you said that might be around 1993, were you experienced at that point in bonds work or were you still learning the business?

MR. DUBESTER: I would like to object. I believe his testimony was that this article was one

of many things. I believe Mr. Turley asked repeated questions to suggest this was the pivotal thing and I don't believe that's a fair characterization of his testimony. So if Mr. Turley could simply ask a direct question without prefacing it with his characterization of what Mr. Marcotte has said, I think we would be farther along the process here.

MR. TURLEY: Senator, if I can make my own objection here, that would be called a speaking objection which is not allowed in depositions.

SENATOR HATCH: That's correct.

MR. TURLEY: You're not allowed to instruct the witness as to what you would like the witness to be doing, which is what just happened.

SENATOR HATCH: Well, I think he's entitled to ask questions the way he wants to.

MR. TURLEY: Thank you, sir.

BY MR. TURLEY:

Q. So, I want to be clear, sir. Is it your testimony around 1993 -- I was saying 9/93 because that's the date of this article -- that's when you started to have more direct connections with Judge Porteous?

A. Yes.

SENATOR HATCH: He's entitled to ask

questions the way he wants to ask them as long as they're not completely out of line. This is a very broad-ranging deposition as far as I'm concerned.

MR. TURLEY: Thank you, sir.

MR. DUBESTER: Senator Hatch, I'm sorry to -- I heard you clearly about you don't want objections and I certainly am keeping that in mind. He doesn't have a lawyer here so I am a little bit conscious --

SENATOR HATCH: You have a right to raise objections if you want to.

MR. DUBESTER: Thank you.

SENATOR HATCH: But keep in mind we're going to allow wide latitude here.

MR. DUBESTER: I see.

SENATOR HATCH: So we want to be as fair as we possibly can be but we're not going to allow total latitude, put it that way.

MR. TURLEY: Thank you, sir.

SENATOR HATCH: And I know the attorney for Judge Porteous understands that.

MR. TURLEY: Thank you, Senator.

BY MR. TURLEY:

Q. Let me ask you about your understanding of Judge Porteous's reputation at that point. Was he

known as a judge who was supportive of new lawyers?

A. I would say that he was supportive of new lawyers too.

Q. I was asking you about in 1993, when you started to have more interaction, were you still learning the business of bonds work?

A. Well, I've been in the business for 10-12 years. No, I knew the business. It's just that before the fees went in, you hardly never needed a judge unless you wanted to get a bond -- somebody got a lot of money and you wanted to get a bond set at 3 o'clock in the morning.

Q. Okay. How about his reputation with regard to bonds in drug cases? Did he have a reputation for being tougher on drug cases when it came to bonds?

A. Yes, he did. What happens was I think he was scared because of the Keith Kline case in the early part of his life when they had the kilos of cocaine and there was supposedly some issues there that scared him with large amounts of drugs, without the DA's objection.

Now, if the DA came down, we used to get the DA to come down and tell him no objection, then he would do it, but the DA would have to say no

objection.

Q. From your personal knowledge, were you aware of Adam Barnett paying Judge Porteous or his staff in relation to setting of any bonds?

A. Paying him in not money but other gratuities, you know, like paying for the golf, paying for the meals, paying for the cars, paying for the gas, paying for the wash of his cars, paying for, you know, anything he needed but not direct cash that I know of. If Adam gave him cash, I've never seen it.

Q. Fair enough. And you had mentioned that Mr. -- is it Hebert or Hebert?

A. Hebert.

Q. -- Hebert, I've got it wrong. So much for that. But you had mentioned that Mr. Hebert regularly took judges on trips and paid lunches, correct?

A. Yes.

Q. Was that also the practice of Adam Barnett?

A. I think some of the things that Hebert did as a bail bondsman rolled over into some of Adam and some of it rolled over into me too, you know. It seemed like it was kind of the way to do business.

Q. And was it fairly common to see judges and lawyers having lunches with bondsmen in Gretna?

A. To be perfectly honest, I've never seen a judge go to lunch with a bondsman in Jefferson or Orleans without me present. Other bondsmen.

Q. So are you saying you wouldn't have -- that you would -- I want to understand that answer better.

You had mentioned that Mr. Hebert would regularly take judges out to lunch, correct?

A. Right.

Q. But you never personally saw those lunches, is that what you're saying?

A. Well, he wouldn't take me with him. But I've delivered groceries to judges, four or five hundred dollars, as you shop for one judge and buy groceries for that judge once a week.

Q. Who is that judge?

A. Nestor Turralt.

Q. And when were you doing that? What years?

A. That was probably '78-'79.

Q. Did he also have you do those types of chores for other judges?

A. He had me do some other -- you know, deliver shrimp, was his big deal. You know, three or

four hundred pounds of shrimp to the judges.

Q. And which judges got the shrimp?

A. Judge Molisson, Zacarria.

Q. Do you know how to spell Zacarria?

A. Z-a-c-a-r-r-i-a, Frank Zacarria. And Grachenette.

Q. Can you spell that?

A. G-r-a-c-h-e-n-e-t-t-e.

Q. Might there have been others in addition to those or you're sure that's the full list?

A. I know about those.

MR. DUBESTER: Can we just clarify the time? Are you asking only back in the Hebert days, Mr. Turley?

MR. TURLEY: We're asking about Hebert.

THE WITNESS: Just Hebert days, yes. And there were others, Louimmet. He was close with Louimmet. He fished with Louimmet. You know -- and Rock was a total BS guy, you know, so you don't know if he was just building himself up to get something from someone else, you know, building himself inside of his office to make these people think he could get million dollar bonds cut.

So you really, you know -- but again, I was with him a lot too, so some of that I know for a

fact. Some of the other stuff with the DAs, and you know, and no objection on -- you know, I remember one time they pled these guys with 10 keys -- Rock had the bond on them. Ralph came in and filed an abstenture to plead the guy absent with 100 kilos of coke. The guy took a misdemeanor and he didn't have to pay the bonds.

BY MR. TURLEY:

Q. Now, you mentioned that after Hebert -- that some of this carried over with Barnett and then you also said it carried over to me. Were you referring to things like the shrimp?

A. Yes, stuff like the shrimp and --

Q. So did you also deliver shrimp to judges?

A. It's been a long time but I think maybe I took over -- once they put those fees in at the jail and I started getting taxed, then I had to get the bonds cut because -- just say -- I'll give you an example.

If it's $100,000 bond, the premium would be 14 or 13,000. Well, now the family's got 5,000. Well, you've got to give the courts 5,000.

Q. Sure.

A. So now you pay the courts, you pay your insurance company, and then you're stuck with, you

know, 7 to $8,000 worth of credit, and -- which is very hard to collect a credit. So it would behoove me to get the bond cut to 50,000 so I could make my money.

Q. I'm going to be asking you about that.

A. Okay. Okay.

Q. I'm going to take you through those steps. At this point I just wanted to see, do you recall any of the judges that you brought shrimp to?

A. Yes, Judge Tiemann, Judge McCave, Judge Grefer, you know, Cascio, Dotson, Fitchue.

Q. And what other types of things would you do personally for the judges? You mentioned that Hebert, you know, you had to do groceries. Did you do other types of things for those judges?

A. Groceries, shrimp. I picked up Molisson's son in the flood in my jeep. It's been a long time with the Molisson thing. I may have bought groceries for Molisson but I think I remember Rock buying a washer and dryer for them but you know, it's been a long time. That's probably 25, 20 years ago.

Q. Fair enough. Do you recall how much you paid Adam Barnett when he was working with you?

A. To --

Q. To do bond things.

A. Just to get them reduced?

Q. Yes.

A. See, if he brought me a bond, I paid him a commission, 30, 40 percent commission. If he -- at some point he was on salary but 30, 40 percent commission if he brought me a bond. If he would go see a judge, depending on the size of the bond, I'd let him make some money. If it was a $100,000 bond and I collected 10 grand, I would give him a grand.

You know. And his words were, you know, when he got those bonds cut, mainly with Porteous and Gucobbie, you know, well, GPT, meaning Porteous, wants his car fixed or he wants gas, he wants it cleaned. So whether he was actually doing it each time, or he was doing it some times, he was just lying because he wanted the bond for the money, I don't know.

But I know there were times that he did fix the car with the money or did whatever Porteous, you know, golf and whatever.

Q. Do you recall when Adam Barnett left? Did he eventually leave the bond business?

A. Well, Adam Barnett got to be so flaky that -- see, my thing, I wanted to write bonds on everyone. You know, these other lawyers wanted to

sell RORs with the lawyers and split the money, but I wanted to write bonds, because I thought it was good for the business if everybody got out on a bond and someone would hunt them.

If you do it on an ROR, a guy could run and no one is hunting him. If you do it that way, you don't have to pay the fees at the jail, you don't have to pay the premium to the insurance company. So if you got a $10,000 bond, and a lawyer gets him released on an ROR, the bondsman takes 500 and the lawyer takes 500 and there is no bond.

Q. I'm going to focus a second on a couple of questions about how you worked as a bondsman in terms of these lunches that you mentioned. When you started your business, how often would you go out to lunch with judges, do you think, in a given week?

A. It seems to be -- I mean, again, it's a long time but, I mean, I think I was going to lunch probably one, two to three times a week depending on each week. Some weeks maybe one, some weeks maybe two, some weeks maybe three.

Q. Sometimes did you go to lunch alone without people with you or did you tend to try to take people along?

A. Sometimes I went by myself but you know, I

was trying to -- I needed to get those bonds cut because of the fees at the jail. So basically if I was going to go to lunch, I tried to -- and sometimes I couldn't corral people to come to lunch with me because they all had different schedules, they were going to lunch with someone else. But basically my main focus was to take people to lunch and preach the bail bond business to them.

Q. And how would you -- you said corral people. How would you do that? Would you go over to the courthouse and see who was available or would you do it over the phone?

A. Actually, you know, some judges' secretaries I would call direct, but, you know, Porteous was a leader in the courthouse. So -- and you know, Rhonda was the gatekeeper for Porteous, and you know, she's the one who did the corralling for me and to get everybody together.

Q. And I want to make sure -- we talked about the shrimp and things like that but -- and the cash. I want to make sure I understand, did you go out to lunch with judge McCave sometimes?

A. Yes, I did.

Q. And did you pay for it?

A. Yes.

Q. How about Judge Gucobbie?

A. Yes.

Q. Any other judges that you would go out occasionally with and pay for their lunch?

A. Judge Hand.

Q. H-a-n-d?

A. H-a-n-d. And I've been out with Tiemann for lunch. I mean, if I had the judges list, I could look at them and say, hey, this one, this one, this one, this one.

Q. Can you give me an estimate of the percentage of judges in Gretna that you have taken out to lunch at one point or another? I mean, give me a ballpark figure?

A. Well, I've been there before most of them, and I left way after a lot of them, so there was different judges through my life in the bail bond business, you know? And so -- and just as with justices of the peace. So the group was pretty large.

Q. When you say pretty large, I'm just trying to get an idea of this. I mean, would you say it was over a dozen or over two dozen? I mean, I don't want to push you if you don't recollect but --

A. You know, it's hard for me to say exact

but I would say over a dozen.

Q. And over a dozen individual judges you're referring to?

A. Yes.

Q. Did you enjoy going out to lunch with Judge Porteous?

A. If it was going to make me money, yes, I did enjoy it.

But at some point, you know, drinking -- I'm an athletic guy. You know, I run a lot, I work out a lot. And getting drunk in the middle of the day, which I've done for a while, you know, was wearing on me so I kind of wanted to ease myself away and I started sending some of my employees to do it. I would send my assistant Lori, I would send my chief financial officer, and I kind of wanted to wean away from that because, you know, sitting around talking about the same thing every day, drinking, you know, and here I am trying to make money at my store, you know.

I mean, I know I was making money at the table by being there with them but you know, it started to -- you do that three or four years, you know, drinking during the day, you feel like crap all the time and I was trying to slowly ease my way out

of that. And I did towards the end.

Q. Did other judges drink at lunch as well?

A. Yes.

Q. In this part of Louisiana, did a lot of people tend to drink at lunch, you know, over these business lunches?

A. Not all of them. You know, a lot of them -- some of them would drink when they didn't have to go back, you know -- - unlike mostly Porteous, he drank even if he had to go back. But the other judges, if they were at the table with me, if they didn't have to go back to work, they would hang. Maybe the lunch would go from 12:00 to 4:00.

Q. Did he often appear drunk to you? Did he stumble or have any other appearance of being drunk?

A. Actually, Porteous was a beast. I mean, he could drink, you know, five, six and walk off straight like it was nothing. You know, vodka straight, Absolut Vodka straight. He would drink four or five of them, you know, and you wouldn't even know he had a buzz.

Q. So when you're saying a beast, you mean a high threshold for alcohol?

A. Yes, high threshold.

Q. When you said you talked about the same

things, did you guys only talk about the bonds business or did you talk about sports or politics on occasion or was it all just bonds?

A. We talked about different things, but you know, like I was in the bail bond business and that was my life. I mean, you know, Mark Spitz trains to be a swimmer; I train to be the greatest bondsman in the country. So that was -- I didn't talk about anything else but bail, man. You know, that was everything.

Q. So in all of the lunches you had with him, you were primarily talking bonds during most of these lunches?

A. Most of the time. Not just bonds, you know, certain judges, you know, can we do this, you know, can we get him to the table or can you talk to this judge, he won't split any bonds for us, so we don't have to wear you out as much. You know, stuff like that.

Q. And that type of issue, you know, the bonds business, would you sometimes talk to judges in their chambers about those same concerns?

A. Yes, I would.

Q. And would that be with other judges beyond Porteous?

A. Yes, it would.

Q. So it sounds like these judges were sort of all business for you?

A. I'm sorry?

Q. It sounds like these lunches were all business for you, that you pretty much stayed close to raising issues that you were concerned about at the court?

A. Right. There was all kinds of issues, you know, like other judges and other people that didn't want to cooperate with me.

Q. Do you recall being interviewed by the FBI on August lst, 1994?

A. You know, I don't -- the dates, I mean, it's been a long time. '94, what is that? 15 years, 16, 17? My math is --

Q. I believe this was the interview for -- the FBI background interview that they were doing for Judge Porteous' confirmation. Do you recall the FBI coming to you and asking you about Judge Porteous?

A. Yes, I do.

Q. Do you know how they got your name?

A. I think probably Porteous gave it to them.

Q. Was Porteous openly friendly to you around the courthouse and in restaurants?

A. Yes, he was.

Q. Would you have described your relationship as a friendship?

A. Yes, we were friends.

Q. When the FBI called you, had Judge Porteous told you before that he had recommended that they call you or did you just get a call from the FBI?

A. He told me that, hey, the FBI may be calling you.

Q. Did he tell you to say anything at that time when he said, the FBI is going to be calling you and I want to you say this or that?

A. No, he didn't say that.

Q. So it was sort of a heads-up, you're going to get a call from the FBI, is that how it worked?

A. It was kind of like I thought he would expect me to say the best of him.

Q. Did you take notes during that interview with the FBI?

A. No, I did not.

Q. Do you know if the FBI interview was recorded? Do you remember?

A. I don't know if it was recorded or they, you know, they wrote the statements. I'm not sure.

Q. Do you remember the names of the FBI agents?

A. No, I sure don't.

Q. I probably wouldn't either.

A. Long time ago, yeah.

Q. How long do you think that interview lasted?

A. Probably 20 minutes.

Q. Okay. Was it over the phone or in person?

A. I think it was in person.

Q. So did they come to your office in Gretna?

A. They came to my office in -- I don't remember what -- I mean, I had a lot of offices. I had a corporate office, I had a bail bond office, I had -- you know, I had offices everywhere.

I don't remember exactly -- and I may not have had my corporate office at that time. You know, it could have been in the bail office or it could have been in my corporate office.

Q. And you remember it was about 20 minutes? It could have been less than that or you just --

A. It seemed like 20 minutes but it could have been less, it could have been more, you know?

Q. Now, after that interview, did you call Judge Porteous immediately after the interview?

A. No, I didn't. I think we went to lunch. I don't know how soon. Maybe a couple of days after or a week after. And then we talked about what they asked and I told him that I gave him a clean bill of health.

Q. Did you give him a question-by-question, answer-by-answer account or did you just sort of generally describe --

A. I think I told him, you know, some of the stuff that they asked about Keith Kline and Phil Boudsique and Gino, how is his drinking problem and stuff like this, generic stuff. And there may be more. But I just -- I don't remember all of -- you know, every question.

Q. I want to confirm, it was your recollection that in this first interview, the FBI asked you about the Kline matter?

A. Right.

Q. And they asked you about rumors about his drinking, is that correct?

A. Yes.

Q. Do you recall anything else besides the Kline matter that he specifically asked you about?

A. I think I may have told him that he had a couple of drinks but I'm not exactly sure. Again,

it's been a long time.

Q. But how about, I'm talking about in addition to the Kline matter/controversy, did they ask you about any other bond controversies or bond cases?

A. No, they did not, not that I can recall.

Q. Do you remember if there was anyone else in the room with you when you gave that interview?

A. I think it was just probably me. I mean, I wouldn't have let any of my employees in unless Lori was with me. But I don't remember if she was or not. There were so many things that happened in my life in those 25 years.

Q. Now, later did you have occasion to say that some of the things you stated to the FBI on that occasion were untrue?

A. Later?

Q. Right.

A. Yes, I did. I mean, he was good to me through the years as far as reducing bonds and I wanted to be good to him.

Q. But did he tell you to be untruthful when the FBI -- when he first told you that the FBI was going to be calling you, did he tell you to be untruthful?

A. No, he didn't tell me to be untruthful.

Q. And did you feel that your interview with the FBI, because you gave him a clean bill of health, gave you a degree of control over Judge Porteous?

A. No, because I know he was going to the Federal bench and I knew that once he got there, you know, at that point, I thought, I don't know if this guy will be able to help me any more and I know this is what he wants.

Q. Did you feel that because of what you said in the FBI interview, you might be able to coerce the judge at a later date?

A. And ask him to do stuff for me? No, I didn't think that at the time.

Q. And we had already established that you actually didn't do any bonds with him when he became a Federal judge, is that correct?

A. No, I didn't do any bonds but I asked him to talk to the magistrate -- actually do bonds, no, but I asked him to talk to the magistrate, so he can get the magistrate to start taking commercial bonds this Federal court instead of letting people out on signatures or putting 10 percent deposits there.

And he told me he would but, you know, did he do it? Did he go ask Louie Moore to do it? I

don't know, he might have been kind of like Adam Barnett saying, yeah, I'm going to do it but never got around to do it. But I still don't know whether he got around to doing it.

Q. Did Moore end up giving you that business?

A. No, he did not.

Q. And by the way, when you wanted a judge to -- let me strike that.

You had mentioned that sometimes you would just go into the chambers of a judge and raise some of these issues with judges, is that correct?

A. Right.

Q. Did you go into Moore's chambers to ask him to do that or try to reach him directly?

A. I may have got him some literature that -- Strike Back is a victims against crime organization who did case studies on commercial bonds versus deposits and the show rate and all of that. I think I may have supplied that to him, but you know, basically I think -- I tried to get into the Federal court with the commercial bonds.

Q. Now, I'm going to represent to you something that was in that first interview and I can show it to you but I'm just going to read it to you to see if you recollect it and that's fine.

In the FBI interview, there is a line that says "he," meaning you, "said the candidate is a very hard worker and many times the only judge still working in the evenings when Marcotte goes to the Gretna courthouse to negotiate bonds with judges," closed quote.

Do you recall that in the FBI interview that you had, of saying something like that?

A. You know, I don't recall that exact question there.

Q. Maybe we should just go ahead and put it in the record. I also should have brought my glasses.

(Exhibit No. 2 was marked for identification.)

BY MR. TURLEY:

Q. We are passing around copies of what is now Exhibit 2. And Mr. Marcotte, this document is of two pages and on the first page, you're going to see a Bates stamp in the lower right-hand corner that says port 000000503.

A. Yes, sir.

Q. And then it continues next with the stamp of 504. And the pages themselves are page number 16 and 17. Do you see those markings?

A. Yes, I do.

Q. And at the top it says: Reference, the following investigation was conducted by special agent, and then it's blocked out, it's blank. Do you see that?

A. Wait, I'm sorry. Can you show me?

Q. It says, "The following investigation" --

A. Okay, yeah, yeah, yeah. Okay.

Q. I just want to confirm we have the same document in front of us?

A. Yes.

Q. Okay. Where I'm referring you to is, if you go down to the third paragraph, the one that begins, "He said the candidate is a very hard worker and many times is the only judge still working in the evenings when Marcotte goes to the Gretna courthouse to negotiate bonds with judges." Do you see that?

A. Yes, I do.

Q. Was that a truthful representation of what you said to the FBI?

A. Probably he was a hard worker for me.

Q. Was he often the only judge that was there working in the evenings?

A. No, they had other judges there.

Q. When you went to the courthouse in the

evenings for bonds, would you sometimes see who was there and try to corner them or talk to them about the bonds?

A. I would see whoever I could get to do the bond, and I knew that Porteous would do the bonds quicker than anyone because, number one, he had more balls -- excuse me, I'm sorry -- than most of the judges. He was close with the DA up there, so he felt comfortable that the DA was going to cover him, and then I was wining and dining him, too.

Q. Now, when you said he had more balls, is that because he was the most likely of the judges to make a tough decision?

A. That and I would have to say, you know, other than some of the bad decisions that he made, he was probably one of the brightest up there.

Q. Now, if Judge Porteous wasn't in the courthouse, would you try to see what other judges were available?

A. I would. We would shop bonds.

Q. When you say shop bonds, you mean you would look for other targets of opportunity, to use that term?

A. Yes, sir.

Q. So was it common for bondsmen to go into a

chamber if the judge was there in the evening and say, you know, can I talk to you about this bond?

A. Yes, it was.

Q. How many bondsmen were working the courthouse when you were working in Gretna? I mean, could you give me a rough idea?

A. They had a couple of them but basically I was writing probably 90 percent of every bond in the courthouse. I mean, again, I said once before and they had the place surrounded like Fort Knox. Again, I trained to be a superstar in that business.

Q. Just getting back to that line, would you say that that's a truthful statement on your part? Is there anything about that that you would say is false?

A. The line that says --

Q. That I read you earlier, "He said the candidate is" -- that whole line?

A. There is some truth to it. A hard worker? Could he run through the docket faster than anyone? He could do his docket in two hours where another judge would take, you know, a whole day to do it. So does that make him a harder worker? Was he there in the evenings a lot?

No, I think Porteous, you know, after

lunch, you know, or as soon as he -- if he could run through his docket between 9:00 and 12:00, then he was going to lunch the rest of the day whether it was me or wherever he could find a lunch or whoever he could find a lunch with. Go have a few drinks and do whatever.

Q. Let me ask you about that. Did Judge Porteous have a reputation for moving his docket faster than other judges?

A. He did.

Q. Now, you also say on this --

A. He also wanted to get out of there quick, you know what I mean? So he moved it quick and he wouldn't put up with any nonsense between two lawyers bickering about nothing, where other judges would just sit back and, you know. Like Hand, for one, he would just sit there and, you know, pokey.

Porteous would move it quick. And he would move it quick because he wanted to get out of there, go play golf, go have lunch, go have dinner, go have drinks.

Q. I'm going to direct your attention to the bottom of the page that's marked 503 and, the first page, and if you look, it says, "He does not know the candidate to associate with anyone of questionable

character." Was that a truthful statement on your part?

A. Well, that's incorrect because, you know, I mean, I had Skeeter with me, Aubrey Wallace, who is my driver, who I tried to make a bail bondsman but he was a big kleptomaniac. But to make a long story short, he's been to lunch with Skeeter who had, you know, two or three convictions, sitting at the table with him.

Q. That was you and Skeeter at the lunch table?

A. And other people as well.

Q. Was this often a large group of people?

A. A large group of people.

Q. Now I'm going to ask something and I hope you would not take offense but would you consider yourself a person of questionable character?

A. No, I wouldn't consider myself at this point in my life.

Q. How about at this point when you gave the interview with the FBI?

A. You know, I was trying to make money and I would have said anything to keep bettering my business, to be the superstar in the bail bond business.

Q. Would you consider yourself a truthful person today?

A. Yes, I would.

Q. Would you consider yourself a truthful person when you gave this interview with the FBI?

A. No, I wasn't because I wanted something out of this, you know? Just like Porteous wanted something, I wanted something. I wanted to repay him for what he's done for me so I would have said anything. I felt obligated to him.

Q. Do you recall being contacted a second time by the FBI before Judge Porteous' confirmation, that they gave you a second call or came to see you a second time?

A. Yes, I do.

Q. Do you recall what they asked you about?

A. I'm sorry, I kind of drew a blank there for a second. Can you help me out a little bit there?

Q. Sure. And if you don't recollect, I don't want you to struggle. Let's try to focus back. The record seemed to indicate that this was an interview in Gretna at the 221 --

A. Derbigny Street?

Q. Yes. Do you recall if it was by phone or

in person?

A. It was in person.

Q. So they came to Gretna?

A. Right, right.

Q. And the records seem to indicate that they asked you at that time about the client matter. Do you recall that coming up again?

A. I know it came up. You know, it was a long time. It came up maybe once or came up twice; I'm not really sure. But I know it came up.

Q. You don't remember how long that interview was?

A. It could be -- I don't know. Half an hour, an hour.

Q. Did you immediately call Judge Porteous after that interview?

A. No, I didn't call him. I think we set up a lunch and then we started talking about it.

Q. Did you tell him exactly everything you said or did you just generally describe it?

A. I think I described what they asked and what I told them.

Q. Did he ever ask you to lie to the FBI at that point or tell you to say specific things?

A. No, he didn't. But I think he expected me

to say all good about him. Again, he was good to me.

Q. Now, were you later contacted at all by the Senate Judiciary staff? Do you remember getting any type of call from the Senate Judiciary staff?

A. It's possible, you know.

Q. I'm going to give you a second to think about that just in case it rings any bell. If you did, it would have to be roughly around this time of the second FBI interview?

A. You know, it could have happened but it seems -- I don't know.

Q. That's fair enough. I don't want you to guess.

A. I mean, my phone rung about a thousand times a day, you know, times 25 years. There are so many situations. It was just unbelievable. I mean, it's hard for me to remember.

Q. Sure. I understand. Let me ask about -- I'm going to take you back to the bond business for a second, like I said. During this time when you started -- we had talked about 1993 when you started to have more dealings with Porteous. During that time, was the Gretna jail under a court order for overcrowding?

A. Yes, it was.

Q. And do you recall whether people were being mandatorily released on a fairly regular basis from the jail?

A. Yes, they were.

Q. And was it your understanding that the Louisiana Supreme Court had set a hard figure on how many people could be held in the jail and you couldn't go above that?

A. Yes, there was.

Q. Now, was it your understanding that a lot of the judges were concerned about people being released mandatorily and not coming back?

A. Yes, they were.

Q. Was it your experience that by giving someone a bond, it made it more likely that they would reappear rather than being released mandatorily?

A. Yes, it would.

Q. Did many judges in your experience favor bonds for that reason because it gave them a likelihood of seeing that individual back again?

A. Most judges favored it and then some of them didn't.

Q. Now, is it your experience that the higher the bond, the more likely the person would come back

because they had more money in the game, so to speak?

A. I think the higher the bond, the more money I would make. But I hunted a bond, if it was 2,500, just like I hunted 100,000.

Q. No, I understand that, but was it your experience that someone who takes out a higher bond is more likely to reappear because they have more money at stake than someone with a lower bond?

A. Right.

Q. By right, you mean you agree with that?

A. The amount of money, yes.

Q. Now, we had talked about your looking for judges sometimes in the courthouse on the bond thing. Are you familiar that there was a judge that -- I think the term was an assigned bond judge. Are you familiar with that term?

A. Magistrate judge.

Q. That's right, they called them magistrate judges for a while.

A. What happens, it would rotate every week. Out of the 15, 20 judges, one judge would take magistrate for one week, then another judge, and another judge and another judge.

Q. Is it your experience judges did not like being the magistrate for that week?

A. I think some of them did but the majority of them didn't.

Q. Now, why didn't they like it, those that didn't?

A. They didn't want to be called, you know, at night. You know, they didn't want to put their name on anything.

Q. Was it sometimes hard to reach the magistrate judge who was assigned?

A. Most of the time, yes.

Q. Is it true to say that there were some judges that had a reputation for not being available when they were made magistrate judges?

A. That's correct.

Q. Can you give me -- if you recollect a couple of the judges that were sort of notorious in not picking up the phone or being available? Do you remember who a couple of them were?

A. Floyd Newlin, J. Karno, Judge LeBrune. You know, I think it was a lot. I can't think of a list. A lot of them didn't want to pick up the phone.

Q. I guess it was posted somewhere who the magistrate judge was for you guys in the bonds business, correct?

A. Yes.

Q. So sometimes you would see that name and you would go, okay, this is not going to be good, this person is not usually available?

A. This is going to be a screwed up week.

Q. Now, when you couldn't find a magistrate judge, was it customary sometimes for bondsmen to go and see if they could find another judge?

A. Yes, it was.

Q. And wasn't it common for judges, when they were told that the magistrate judge was not available, that they would often sign things if you couldn't reach the magistrate judge?

A. Yes, then we would go to other judges. Not just -- lawyers and everything.

Q. Now, that system changed later, right? Didn't they go to a commissioner that handles bonds now?

A. Now, but yes, they did have a commissioner. But even after they had the commissioner, we were shopping judges.

Q. How could you do that? Because I thought the idea with the commissioner was to have one person people would go to. Would bondsmen still shop around?

A. Basically the commissioner would handle the magistrate court. It would be available for bonds but, you know, if we couldn't get the bond that we wanted, then we would go to the judge that would give us the favorable bond. Because remember, we wanted to maximize the profits of our company.

So if I went to a commissioner and she would only cut a $100,000 bond to 70 and I needed it cut to 30 so I could collect the 3,000 and maximize the profit of my company, I would say, the hell with the commissioner, I'm going straight to the judge who is going to do the best for me.

Q. Now, how many judges do you think you were able to get bonds signed outside the magistrate judge? I mean, did basically most of them do that or can you give me an idea?

A. During the Porteous time or just in general?

Q. During the Porteous time.

A. You know, Sassone was putting the pressure on with other judges and we were fighting with her and it got a little tight. So we did shop other judges but, again, Porteous, he was the guy.

Q. Well, did some of these other -- I'm sorry.

A. No, go ahead.

Q. For example, would Judge McCave sometimes sign when he was not magistrate judge?

A. He would do them sometimes.

Q. How about Gucobbie?

A. Gucobbie would do them sometimes too.

Q. How about Green?

A. He would do them sometimes too.

Q. How about Cascio?

A. He would do them sometimes too.

Q. Was there any judge that would never do it?

A. Yes, there were.

Q. So am I correct you would not try to shop with those judges?

A. No, I wouldn't. And can I say something?

Q. Sure.

A. When we were buying Porteous lunches, fixing his car, he would kind of be like on commission, not as far as cash. He would do more when we would do more for him.

Q. Did you have those other judges on commission?

A. Some of them, yes.

Q. Which ones did you have on commission?

A. I think Cascio.

Q. And who else?

A. Probably -- you know, there were different times. If we were talking about the Porteous times, you know, Bodenheimer, when I was wining and dining him, he was on -- you know, you would see the increase of the bonds when I was doing for him. And Moterrello too.

Q. Anyone else?

A. It's probably -- but none of them like Bodenheimer, Green, Porteous, you know, maybe Moterrello.

Q. How do you spell that last name?

A. Moterrello, M-o-t-e-r-r-e-l-l-o.

Q. Did any other judges besides those judges sign bonds when they weren't magistrate judge? Were there other judges beyond those judges?

A. Yes, they would. But they wouldn't do them -- they wouldn't reach out, you know, reduce a $500,000 bond to 50,000. You know, if you got a $100,000 bond you need to cut to 50 -- when it was an easy one, it would go to those other judges. When it would get hard, it would go to, we call them our A team.

Q. Now, when you say cut the bond, are you

talking about splitting bond, net reference?

A. Splitting, yes.

Q. Did people split bonds before Judge Porteous became a judge?

A. Yes, they did.

Q. Did most of the judges split bonds in Gretna in your experience?

A. Yes, most of them split bonds.

Q. Now, was it your experience that some of the judges believed that split bonds were a good thing to do because it allowed a bond to be placed on someone before they were released mandatorily?

A. Most of the time, depending on the value of the person who was signing, which most of them were worth nothing, so the only thing that had any significance was the commercial part of the bond. The personal surety part of the bond was just to let the public know that they got out on a very large bond but really the bond was only -- the only secured part of the bond was 50.

So if somebody gets out and does something crazy, it looks like he got out on a half a million dollar bond and a 50,000 commercial bond and a $450,000 personal surety bond, you know, so he immediately looks at it, oh, he got out on a

$500,000. Really he only got out on a $50,000 bond. It was just a way to cover up the size of the bond.

Q. Is that really the only reason that you split a bond, was to cover it up, so a judge wouldn't split the bond for any other reason than covering it up?

A. Well, again, a judge, depending on the crime, he wants to look good in the public eye in that he's hard on crime and he's letting people out on high bonds when the truth of the matter is, you know, the real bond is a commercial bond.

Now, they do in some instances have personal surety people who will sign who are really substantial, but, you know, most people in our area, you know, if their house is worth 150,000, they've only got $20,000 worth of equity in their property. So if the bond is 300,000, they sign for 250 and we write 50 commercial, that 250,000 is worth probably zero because then you've got to pay off the first mortgage and all you've got is a $30,000 second mortgage which is worth zilch.

Q. Sure. Let me cut back on my question again. Did some judges believe that splitting bonds, in your experience, was a good practice, not to cover up anything but that it was a good practice in some

cases to split bonds?

A. I think they thought it was a good practice but, you know, if the -- we'll go by that example again. If the bond is 500,000 and only 50 of it is really good and the other 450 -- if they believe the 450 was good on a guy who worked at Avondale and made 20,000 a year, well, yeah, do they believe it's good or are they hoodwinking themselves thinking, hey, I'm going the right thing or I'm just trying to make the public see, hey, this guy got out on a half a million dollar bond.

Q. Let me ask a question. We'll try to focus in on this issue.

A. Okay.

Q. Were you aware that some bonds were set originally too high and that judges would sometimes split bonds where they believed that the original bond was simply too high?

A. I'm sorry, I was distracted.

Q. No, that's okay. It's all right.

(Mr. Regan enters hearing room.)

THE WITNESS: I'm Martin Regan. I'm his attorney and I apologize for any delay this morning. I've had a medical issue and am having some problems with my jaw. I'm ready to go.

MR. TURLEY: Please sit down. I'm sorry about your medical issues. Your client was comfortable in proceeding and then we stopped a couple of times to see if he was still comfortable going forward. But I'm Jonathan Turley and we're still on the record. Can we proceed?

MR. REGAN: Sure, absolutely.

SENATOR HATCH: Why don't we go around the room again so he knows --

MR. TURLEY: Oh, sure. Why don't we go around the room and introduce ourselves. I'm Jonathan Turley.

MR. MEITL: I'm P.J. Meitl. I'm working with Professor Turley on this case.

MR. SCHIFF: Adam Schiff, representative for the government.

MR. DUBESTER: Mark Dubester.

MS. JOHNSON: Erin Johnson for the committee.

MS. BRYAN: Patricia Bryan.

MR. KIM: Justin Kim with the committee on impeachment.

SENATOR HATCH: Senator Hatch.

MR. JIPPING: Tom Jipping for Senator Hatch.

MR. TURLEY: Senator, could I just -- maybe we take a break for Mr. Marcotte to use the rest room?

SENATOR HATCH: That's a good suggestion. Why don't we take a five-minute break.

(Recess at 10:32 a.m.)

BY MR. TURLEY:

Q. We are going back on the record and we're now joined of course by Mr. -- it's Regan?

MR. REGAN: Regan, Martin Regan.

MR. TURLEY: Thank you, sir.

BY MR. TURLEY:

Q. I want to go back to -- there was one reference you made. You referred to your A team of judges. Do you recall saying that?

A. Yes, sir.

Q. Could you tell me who was on the A team?

A. Well, it would be Bodenheimer, Green, Porteous, Cascio, probably Gucobbie.

Q. Did Judge Porteous sometimes turn you down on bond requests?

A. Yes, he did but most of the time he'll turn me down and if I couldn't get the bond done with anybody else, I would go back and keep putting the pressure on him and most of the time he would cave

in.

Q. I wanted to ask you to return to why judges sometimes believed it was a good thing to split bonds. I would like to pursue that a little further with you. Were you aware that some bonds -- in your experience, were some bonds set artificially high initially?

A. Yes, sir.

Q. And would some judges, if they believed that the bond was set too high, split the bond to solve the problem?

A. Yes, they would.

Q. You had mentioned that judges prefer to do bonds instead of having people mandatorily released. Do you recall saying that?

A. Yes.

Q. Was it your understanding that some judges viewed split bonds as useful for that purpose, to try to get as many people under bonds before they were mandatorily released?

A. Yes.

Q. How many bonds did your company do in a given week? Let's put it sort of in the middle of what you call the Porteous period.

A. On the national level or the Jefferson

Parish level?

Q. Just in the parish.

A. Probably 30,000 a month.

Q. 30,000 a month?

A. Now, that's 60 to 70 percent of most jails are the people who are arrested or misdemeanor bonds which are scheduled bonds. So when you hit the jail, you automatically have a preset schedule bond that most sheriffs implement on certain charges. Anything that's not punishable by hard labor, most of the time when you hit the jail, you have a scheduled bond.

So that leaves 30 percent of that. You know, that's still not -- see, that's 30,000 bonds but some guy may have four or five charges so that's four or five bonds. So it's hard to quantify the amount. If you're trying to get to how many of them were split in the courthouse, it would be hard to get to the amount that were split versus the misdemeanor bonds and the amount of bonds on each charge.

We would write separate bonds on each charge because if they would toss two or three of the charges, we would only be liable for a smaller portion of the bond.

Q. I'm trying to get more of an idea of just the traffic.

A. Right.

Q. And I appreciate your explanation. And once again, we're going to get into some of the nitty-gritty on the bonds in a bit.

A. Okay.

Q. But, how many bonds would you estimate were signed in a given day by judges in the 24th judicial district, if you had to estimate?

A. It seems like anywhere between maybe 1 and 10, depending on what day. Sometimes they didn't need to be split because they were set reasonable and you would just go post the bond.

Q. Did Judge Porteous ever set fees from a particular bond, that is, get direct fees from a bond in terms of cash from you?

A. No, he didn't.

Q. Did any other judge?

A. No.

Q. Let me ask you about one bond request. Do you recall Judge Porteous turning you down for a bond for a man accused of fraud in New York? You came to him to get a bond for a fraud case in New York and he ultimately denied it. Do you recall that bond?

A. He didn't actually deny that bond. He did the bond and then the jailer called him and said, you

know, he might be involved in the Oklahoma bombing or one of those and then he canceled it. But he did --

Q. I'm sorry, you should finish.

A. No, I'm finished.

Q. You said the jailer called him. Couldn't it also be possible that he called the jailer in that case?

A. Well, he called the jailer. He had done the bond and the guy was getting ready to walk out the jail and this guy said, look, maybe he's involved in some kind of terrorist -- you know, maybe Oklahoma bombing. I don't remember. It was some serious, you know, maybe bombing the subway or something like that and he called and said, cancel that bond and put him back. You know.

Q. Could it also have not been terrorism but just a fraud case in New York?

A. Well, in the beginning, that's what we thought it was. And then I think later we found out -- I don't know. I didn't follow up after it. I remember Porteous because we made a joke about it. Hey, you were getting ready to let this guy out of jail who bombed some -- whatever. That's what I remember about that.

Q. Are you familiar that the judge gave

instructions to his secretary to call the jail on all bonds to check out the representations made by bondsmen?

A. Yes, she would always get the rap sheet and then give it to him and let him know how many arrests and how many convictions and then he would make a decision on the record.

Q. So he would never take the word of a bondsman, he would have his secretary confirm independently the rap sheet?

A. There were times that he took my word because maybe Rhonda wasn't there and he didn't feel like, you know, there were times that he did that. But there were also times, well, if he calls over there and he would say -- ask the desk sergeant himself, look, give me the rap sheet.

Q. Was it your understanding that the standard operating procedure he gave to his secretary was to call the jailer and confirm the background?

A. Yes.

Q. And that applied to you and all bondsmen?

A. Yes.

Q. Thank you.

A. And I would never lie to him about the bonds. I mean, if I got the rap sheet from the jail,

I would tell him exactly what they told me at the jail. Because I didn't want to get in the same situation as Adam where I would be cut off.

Q. Was there a rule book or guide book on what to set the bond at, for judges, that you know of?

A. No, they just arbitrarily set the bond at what they thought was significant for the crime.

Q. Was it your experience that if the DA objected to a bond, that it would be denied?

A. Yes.

Q. Was it your experience that if an expungement was objected by the DA, it would be denied?

A. Yes.

Q. And is the same --

A. But I don't know if that was a rule of thumb. You know, maybe it was denied and the judge went ahead and made the decision himself and then maybe the DA could take an appeal. But, you know, I'm sure there are tons of cases where the DA objected and the judge granted it and then either the DA takes the appeal or he just rolls over and says, okay.

Q. Now, you had mentioned that the judge

tended to be tougher on drug cases. Do you recall?

A. Yes.

Q. Was there a better judge to go to for drug cases?

A. He was only tough on the drug cases if we couldn't get the objection from the DA. If the DA says no objections, then he didn't care how much it was. Now remember, his relationship in the DA's office was so tight with those guys because he worked up there with them for 30 years, and if they figured Porteous really wanted to do a bond, I believe they leaned towards helping him.

Q. But in Jefferson Parish, if a DA objected to a bond, you would say that most judges would turn it down, correct?

A. Most judges.

Q. How about Porteous?

A. Yes, sometimes if they objected, he would turn them down. But again, if they knew -- one DA, Howie Peters, he and Porteous were close and everybody at the courthouse knew Porteous was helping us. So if he knew in the back of his head that, you know, hey, I know Porteous wants to help Louis so let's do it, you know, let's agree.

Q. So you're saying that the district

attorney's office was involved in trying to help Porteous help you? Is that what you're testifying to?

A. Yes.

Q. And which DAs did that, that were trying to help Judge Porteous?

A. They had a DA that handled the drug court and his name was Howie Peters and Adam was working him too. And I was working him too. And he wouldn't -- I mean, we had -- you know, we all were close so he would not object to almost any of the bonds.

Now, normally, when you file a motion to reduce a bond, you have a formal hearing in court with the judge and you put on a few witnesses and explain why the guy's not a flight risk and why the bond should be reduced. We didn't go through that formality. We just -- the DA would call Porteous and say, "no objection," boom, done.

Q. You said you were working Mr. Peters. How did you work Mr. Peters?

A. Talked to him a lot. I think he may have came to lunch with us a few times. He knew we were close with Porteous so he respected Porteous like a lot of people in the courthouse and, you know, with

the strength that Porteous brought to the table, wherever he went, you know, people listened.

Q. Why did people respect Porteous?

A. Because he was up there a long time. That's one reason. And again, he was probably one of the brightest guys, other than his faults and his mistakes, he's probably one of the brightest guys on the bench and I would say one of the brightest guys on the Federal bench.

Q. When you say that you worked Peters, did you ever buy him lunch?

A. You know, it's been a while. I can't recall but I think I bought tickets, you know, for DA in St. Charles where he was getting ready to go work for or he was close with some DA in St. Charles, so I bought some tickets for him just so I could keep a relationship going so he's not objecting.

Q. Now, was it your understanding that his relationship with the DA was built on the fact that he was a former prosecutor? I'm talking about Porteous now?

A. Yes.

Q. Do you think that being a former prosecutor gave him a little more confidence in the setting of bonds?

A. Absolutely. And again, I think he was the first assistant on the Momoletious so he was the boss over all these guys in the DA's office so once you're running the DA's office, you know, the day-to-day stuff, and you move into a judge's position, you're still kind of running things because that's what they see you as.

Q. By the way, when you went out to these lunches with Judge Porteous and the other judges, were they in public restaurants in the open?

A. Yes, they were.

Q. Did other attorneys see you?

A. Other attorneys, they saw me and other judges saw me with him, because we would all be around the courthouse somewhere and other judges would be going in those places and there I would be with Porteous.

Q. And we have some receipts from a place called the Beef Connection.

A. Yes, sir.

Q. And that restaurant is still there, is it not?

A. It is.

Q. By the way, what are you doing now for a living?

A. I have a clothing store.

Q. Where is it?

A. I sell men's suits, high-end women's, you know, designer stuff.

Q. Where is that located?

A. It's located like probably five blocks from the Federal Building.

Q. Would you call the Beef Connection -- I was just there two days ago. Would you call that a fancy restaurant?

A. Not fancy in looks but fancy in -- I guess fancy in price, you know. Steaks, lobsters, I mean, it adds up, drinks.

Q. Is that a place that judges and lawyers commonly go for lunch?

A. Yeah, I would say in that time, because they have other steak restaurants, it was the Ruth's Chris of the West Bank.

Q. Now, let me direct your attention to that period that you actually pointed out, which was the period after he was confirmed, before he took the oath as a Federal judge. And you mentioned that you were still getting bonds during that period. Do you recall how many bonds he gave you on the last day he was in office?

MR. DUBESTER: I would object to a memory test like that unless Mr. Turley can point to something in particular.

MR. TURLEY: I first want to know what his memory is and then I'll see if I can refresh it.

SENATOR HATCH: You can answer the question.

THE WITNESS: Answer the question?

SENATOR HATCH: Yes.

THE WITNESS: Okay. What I can recall is we wasn't going to bother or try not to bother any judges after Porteous was confirmed so we can actually open the floodgates and get as much as we can out of Porteous before he leaves. So why would we bother all these judges when Porteous is leaving. Let's wear him out, get as much as we can out of him, then he's going to be gone and we won't be able to use him again for bonds.

BY MR. TURLEY:

Q. Let me ask you this, Mr. Marcotte. When a judge was leaving office, did you sometimes do the same thing, that is, if they weren't reelected, you would try to push as many bonds to that judge before they left office?

A. You know, no one's left, you know, no

one's left like that. I mean, Ronnie left. Ronnie left, headed to jail. Judge Green left headed to jail. Gucobbie is still on the bench, Cascio is still on the bench, Hand was still on the bench. All of the A team and my two guys were still there after I left. Windhorst.

Q. I can represent to you -- and we're getting the material -- that we have looked at all the bonds that have been turned over by the House.

A. Yes, sir.

Q. And I'll represent to you that we have found only one bond on that last day and what I wanted to ask was whether it was your -- and I'll show you that bond. My colleague here is digging it up.

A. Okay.

Q. But whether it's your recollection that you had more than one bond on that last day?

A. I can't recall. Maybe the last day, he was tired and said, that's it. I don't know. I just can't -- on the last day.

Q. When you say he was tired, could it also be that you didn't ask him for anything more than one bond? I mean, do you have a specific recollection?

A. Well, maybe there was only one person in

my office with money that day.

Q. I can put this in the record but maybe I'll just read you the name but I'm willing to put it in the record. But it's -- gosh, I can't even read that. Oh, Craig Massey is the name of the bond I'm referring to. Do you remember Craig Massey?

A. There was so many. I did 30, 30,000 in a month but you know --

Q. It's okay. It's not important. Can I ask you to see if you have -- and I can give you this. I was just going to see what your general recollection was.

A. Okay.

Q. Do you recollect roughly how many bonds you moved in front of Porteous the week he was leaving, like an estimate?

A. You know, I really can't, but I know the order in my office was wear him out before he leaves. Now, were we busy that week? You know, how many bonds did we do? Were some of the bonds already set that the people could make without me having to get them split?

I mean, there was a number of variables there that could have, you know, precluded me from, you know, writing tons of them. I just don't know

how many. It's been a long time. But all I could say for sure is the order. And it may not have even been a week before he left. It may have been two weeks. Hey, from the time he got confirmed on, let's roll with the bonds, wear him out.

Q. Now, would you, just to try to -- I realize that your recollection is hazy and so it may be that this is no value. But taking the final month, would you find it surprising that you only asked for 20 to 30 bonds in the final month with Porteous? Would that be within the range of what you recollect?

A. Again, I'm not sure but it could be. Again, I don't know. That's, what, 17 years ago? I'm not exactly sure but if it's 20 you said -- and when I left in '03, in '03 or '01 or '02, I was writing 100,000 bonds a month on the national level.

But in '93, I was nowhere near the size that I was when they took me down. You know, so maybe 20 or 30 bonds were a ton of bonds for the amount of penal liability that I was writing at that time.

Q. Well, we're referring really to 1994. What do you think your average was in 1994 in bringing bonds every month to Porteous? Would you

estimate it was more than 30 or less than 30 in an average month in 1994?

MR. REGAN: Excuse me, let me ask for clarification. When you say bringing bonds, does that include Louis and his staff, anybody from his staff?

MR. TURLEY: Yes, thank you.

MR. REGAN: The entire staff?

MR. TURLEY: Yes.

THE WITNESS: Again, what happened with my business -- you know, I'm not trying to, you know, deflect from your answer but what happened with my business, it hockey pucked and I went from, you know, writing three or four million a year in premium to 30 million by '01.

So you know, those 30 bonds, again, could have been all of the bonds because my volume wasn't nowhere near what it was when I got to that point.

BY MR. TURLEY:

Q. I was reminded I missed one thing at the beginning because your counsel was not here. I wanted to ask once he was here. Have you been given immunity by Congress to testify today?

MR. REGAN: He has not.

THE WITNESS: I have not.

BY MR. TURLEY:

Q. I just wanted to ask.

MR. REGAN: He has not.

MR. TURLEY: Thank you.

BY MR. TURLEY:

Q. I would like to ask you a little bit about the home repairs. You had mentioned that you were doing different things for different judges, if you recollect. Did you ever do any home repairs for other judges?

A. Yes, I did. I had a construction crew, because I had those 90 bail officers and they constantly need -- you know, you've got 90 pieces of property, you had to work on them. So I had a construction crew in place and if somebody needed something fixed, I would send my crew out to fix it, you know, if they needed something, to fix their property.

Q. Did you sometimes do this for attorneys?

A. I can't recall that I did but, you know, maybe I helped one of my friends here and there with something but I can't recall that I was doing it for, you know, attorneys, but maybe. If I did, it was only one or two and I can't remember.

Q. How about judges. Could you give me some

of the other judges that you would do this for?

A. I think we did some patchwork on Cascio's house, I think.

Q. Did you say patchwork on the roof?

A. On the roof. And I've done some work on Bodenheimer's house. I sent a crew out there. And I've done some work on Porteous' fence, you know, and I think that was all, just his fence we repaired.

Q. How about Gucobbie, McCave?

A. No, I don't think I did anything at McCave's house and I don't think I've done anything at Gucobbie's house but some other -- it could have happened once or twice with someone else. I just don't remember. Like if we had dinner and some judge said, you know, my siding fell off the side, I would say, look, I'll just get my crew to come out there and patch it up for you.

Q. Would it occur when a judge would make an off comment like that, or -- as opposed to saying will you fix it? Did you volunteer to fix it in these situations?

A. Host of the time, I volunteered. Now, someone would tell you, my fence is broken, they're looking at you, because -- they know all my business. You know, it seems like they would expect me to offer

because I had the crew at my fingertips, you know.

Q. Did Judge Porteous ask you to fix his fence or did you volunteer to fix his fence?

A. I volunteered.

Q. And you say that's the only one you remember doing a repair work for him?

A. Yes.

Q. Do you remember how much that cost?

A. I sure don't. You know, I mean, there were some boards and I sent two guys out there. It's hard for me to remember but I'm sure it wasn't -- you know, I really don't know how much. I don't even know how much of the fence they repaired. I never did even go out there and see it.

I sent my brother-in-law and Aubrey Wallace there to fix it and if they needed boards or whatever, I just gave them -- they went to my accountant department, got the money for the boards and went and, you know, fixed it.

MR. REGAN: For clarification, you're just referring to structures, buildings? You asked if there were any other repairs for Porteous. There were other repairs.

MR. TURLEY: Right. I'm just talking about buildings. We're going to get to the car thing

if that's what you're thinking of.

MR. REGAN: I just didn't want to miss it.

MR. TURLEY: Right. And I should have clarified that myself.

BY MR. TURLEY:

Q. So did you know how long they were out there repairing this fence?

A. It might have taken two or three days.

Q. Two or three days?

A. Yes.

Q. To repair the fence?

A. Maybe they went out there three or four hours one day, three or four hours the next day. My employees on salary, they've got to drag it on and milk it as long as they can, make the job last longer than -- you know how people are, employees, you know. They've got to goof off and smoke marijuana, do whatever they were doing, in his backyard. But anyway --

Q. When you say repair the fence, was it your understanding that this was just like planks that had fallen off?

A. I think some wind blew through and knocked a portion of the fence down and they went there and fixed it. Again, I never did see the fence. They

saw it, you know, and they gave me -- I sent them to get the boards and nails and they worked on it and fixed it.

Q. Do you have any idea, for example, whether this whole fence expenditure was less than $200 or more than $200?

A. Well, the hard costs of the wood, whatever that would be, and however much they prepared and then the labor costs, which the guys were on salary with me. If you want to add up the hours, let's say they worked 12 hours. You know, two guys, $10 an hour or $12 an hour, maybe we can quantify an amount like that. And again, I'm just speculating here because I'm not even sure how many hours they worked and how many boards I bought.

Q. Let's talk briefly about the car repairs that your counsel has raised -- or clarified, not raised. Did you sometimes repair cars for other people?

A. I think that maybe I've put tires on a few deputies' cars who had bald tires and, you know, I bought a car for a deputy. I would see him walking to work at 5 o'clock in the morning in the rain.

Q. You bought him a car?

A. Yes, a $2,000 car.

Q. Did the judge ever ask you to repair his car or did you volunteer for that too?

A. It started out with, you know, we're at lunch and then it started out with we're at lunch and, you know, he says Tim, my car is broke again and I would say -- or my car is broke. "Don't worry about that, judge, I'll take care. I've got a mechanic who I know will handle that."

And then that's how it started out and then at some point, he would have to have Rhonda call or he would ask at lunch, hey, this car needs a transmission, this car needs to be painted, this car needs tires, this car needs a radio. It started out with me volunteering and then it became him asking.

Q. Do you recall telling the FBI later that you believed that Judge Porteous was in difficult financial conditions?

MR. DUBESTER: I would just ask that if he has a specific statement, he indicate -- as opposed to memory, if you're going to ask him about a specific statement, I would just ask that he show the statement to him.

(Witness confers with counsel.)

MR. TURLEY: While they're doing so, I would simply note I think since he has able counsel

with him, I think his counsel is in a good position to make objections in terms of his own client.

THE WITNESS: When they originally came to me for his confirmation or a different time?

BY MR. TURLEY:

Q. I was asking just generally if you ever told the FBI at any point that you believed that Judge Porteous was in financial difficulties.

A. When he was getting confirmed or later?

Q. Let's start with confirmed and then later. How about during confirmation?

A. It's possible that I said that but I don't know if I would say that because I didn't want to damage him in any kind of way. I may have said it but I really don't think so but, you know, I'm not exactly sure.

Q. How about later -- how about after the confirmation?

A. After the confirmation, the second time they came? No, I don't think I would have, you know, tried to damage him in any kind of way but, you know, maybe I did say it, you know.

Q. Well, let me ask you, would you have had any personal knowledge of his finances beyond just lunch conversation?

A. He's never talked to me about his finances. The only thing is if you looked at his surroundings, you could see that he was having financial -- you know, bald tires on cars, junk cars, wrecked cars, beat-up cars. You know, you could see that there was financial problems there.

Q. But is it correct to say you never saw any type of financial statement or any figures from his accounts?

A. No, I never did.

Q. How many times do you think you repaired his car?

A. His car?

Q. Or cars, I should say.

A. All of them?

Q. Yes.

A. Probably -- you know, it's hard for me to say because, you know, if I was to just guess, and I wouldn't want anyone to hold me to it. Probably 15 times, all of them, you know, as far as putting gas in and getting it washed, tires, radio, his kids' cars, transmissions. Probably 15. I think that would be a -- between 15 and 20, at the most 20.

Q. Do you have any record of those repairs?

A. I don't know if the FBI, when they took

those papers, they had -- you know, because I mean, I guess maybe I paid some cash for some things but it would all be a tax write off for car repairs. I would have ran it through my company but, you know, I wasn't as knowledgeable as I am now on -- I was young. I mean, probably I'm 30 years old, you know, 17 years ago, something like that, 29, 28, 30.

(Witness confers with counsel.)

THE WITNESS: He was kind of a grunge -- with all due respect, he was kind of a grunge. He just wanted the car to run. He didn't care too much about the cleanliness of the cars. When I took it to get it repaired, I had it washed and waxed and filled it up with gas. All of his cars were kind of -- I mean, they were never spotless. Just like any other guy who has an alcohol problem, it seems like everything starts falling apart around you. You don't clean your car, you know.

BY MR. TURLEY:

Q. Was he the only guy you knew with a messy car like that or he was a standout in that sense of how messy his car was?

A. Yes, he was kind of filthy. The carpets were filthy. And when I had it cleaned, it would be spotless but, you know, if I didn't clean it, he

wasn't going to take it in and get it washed or waxed or spend three hours cleaning it during the day. He just wasn't that kind of guy. I mean, I'm sure he would have liked to have had a nice car. A car wasn't really that important to him.

Q. Did Judge Porteous or anyone associated with him ever give you cash or a check to reimburse you for some of these repairs?

A. No, I don't believe. Now -- no, not for the cars.

Q. What did they reimburse you for?

A. A lawyer reimbursed me for a trip. I split a trip to Las Vegas with some lawyers and they reimbursed me.

Q. Did Adam Barnett ever pay for these repairs?

A. Yes, he did.

Q. Can you tell me --

A. Wait. I don't know if he paid for the repairs. He made me pay for half of them. He took half, he said, and he paid for the repairs. Whether the repairs were what they say they were going to be or, you know -- I know that he took cars before me to different places and had them washed and gassed and fixed for Porteous before me.

Q. So am I to understand this correctly, that he would come to you and say, I just had this car done for Porteous?

A. We would do a bond and it would be money, okay? And then he would say, okay, look, Porteous wants -- Porteous needs his car fixed, okay? So we made 2,000 on this bond. You know, pay me my commission. Okay, my commission is 500 and Louis, you made your money. Now, let's each put up 250 and get the car fixed. Now, I wasn't dealing with Porteous then. He was.

Q. So when you said he said he did it, are you suspicious that sometimes he might have pocketed the money?

A. Yes, sometimes he may have pocketed the money. But I've seen him with his car too. You know, I've seen him pick it up with the keys in hand and go wherever he went to get it fixed.

Q. Did you, when you were having lunches with Porteous, did you try to develop a friendship? Was that part of the purpose of these lunches was to develop a personal connection with him?

A. Yes, I wanted to be close with him because, you know, I liked him and he could make me money.

Q. And so did you try to make sort of personal bridges or connections to him during these lunches to make him closer to you as an individual?

A. Yes, I did.

Q. Do you feel it worked? Did you feel that Porteous seemed to be closer to you on a personal level?

A. He seemed to be.

Q. Now, do you recall going to New York and bringing fake Rolexes back to the courthouse?

A. Yes, from Chinatown.

Q. You went to Chinatown in New York?

A. Yes.

Q. And you bought fake Rolexes?

A. Yes.

Q. How many did you buy?

A. Probably 20 of them.

Q. And who did you give those to?

A. I really can't recall everyone but I think I gave some to the clerks and the record department. I gave some to Judge Green and I gave some -- I can't say for sure if I gave one to Porteous or not but I know for sure, because Green particularly asked me to bring him a fake Rolex back.

Q. How about other judges?

A. I may have gave some -- I gave some probably to Rhonda and other -- maybe McCave's secretary. I'm not exactly sure, though.

Q. Would it be correct to say that when you got back, you went from chamber to chamber with these watches for judges?

A. Probably.

Q. How much do you think those watches were worth?

A. If I brought 24 watches back, at that point, they were 10 bucks a piece, 240 bucks.

Q. Did they work?

A. Yes, they worked for a little while and they would break or whatever.

Q. It's better than the watches I buy in New York. Now, did you also give judges hams and turkeys and cakes?

A. Hams, turkey, cakes, gingerbread houses.

Q. Could you tell me who a few of the judges were that you gave those to?

A. Gingerbread houses for Christmas, every one of them.

Q. Can you describe the gingerbread house? Was it big?

A. It was big, you know, that size.

Q. How much do you think that was worth?

A. Well, my ex-wife owned a bakery and I would get a good price on it but still, they were probably $10 apiece.

Q. How about the hams and turkeys. Which judges got those, if any?

A. I tried to give them to every division for Christmas and Thanksgiving and all the deputies too.

Q. Did any of the judges ever turn down the turkeys or hams to your recollection?

A. Carol Kiff did and Jeff Hand did. But in the older days, no one turned them down.

Q. Is it your experience that sometimes lawyers would bring those types of gifts to judges during the holidays specifically?

A. Yes, wine. Mainly wine. I don't know if they were doing the hams, because hauling meat around, you know, it would be easier to bring a bottle of wine.

Q. Now, do you recall going to a conference in Destin in June 2000 with some judges?

A. Yes, I do.

Q. Did you charter a boat on that occasion?

A. I think we may have paid for the boat, the chartering of that boat. I could be wrong but, you

know, my sister -- you know, I was a guy who hung out with the judges. My sister handled most of the, you know, the credit cards.

I didn't carry -- I'm very forgetful. I lose wallets, I lose credit cards so I never did really carry anything with me so, you know, she would pay, you know, or my controller would pay. They have a card that was in my name.

Q. Do you recall what judges went with you on that trip?

A. I believe it was Bodenheimer, Hand, I think maybe Green, and I'm not sure if Porteous was with us on that trip. I don't recall.

Q. Would it surprise you if Porteous said he was not on the trip?

A. No, it wouldn't surprise me.

Q. Did their wives come along on those trips?

A. I think Hand's girlfriend and Green had a son and his wife was on the trip, but I don't know if she came on the boat trip. Maybe she done something else. I'm not 100 percent sure.

Q. Do you recall what you made available to people on that trip? Did you serve booze? Did you serve food?

A. I'm sure my sister had an ice chest full

of whatever, if they need -- or maybe the charter boat supplied this stuff, you know, for a fee. I don't recall but --

Q. Have you done trips like that on other occasions, of chartering boats like that for judges?

A. No, I didn't, but I chartered a boat for the sheriff, for a guy named Pat Pasquier. Not chartered. It was for him. Me, the sheriff and a couple of other sheriffs. Jack Stevens, he never did come on the boat. He was in the area and he took the sheriff out.

But anyway, to make a long story short, my staff, Harry Lee and a couple of his chiefs in the sheriff's office was on that boat and we stayed one or two nights and we pushed and that was it.

Q. Did you have occasion to take any judges to Las Vegas?

A. Yes, I did.

Q. How many times do you think you did that?

A. I think two times, if I could recall, two times, I think. Remember the bail bond convention was in Las Vegas 25 years so every year, I went to the bail bond convention.

Q. Did Judge Porteous sometimes speak at the convention, to your knowledge?

A. He did.

Q. Why would he speak at the convention? Was he a judge that people thought knew a lot about bonds?

A. I think he spoke at the convention because, number one, because of me, because I asked him to do it. And number two, he knew bonds and he was a great speaker. You know, he wanted to go to Vegas too, of course.

Q. Now, you said there might be two trips. Was there a trip other than the one to that conference?

A. I think one was in the beginning, like a couple of years after '93 or something. I don't know the times but I went with a bunch of lawyers and him.

Q. Do you recall who those lawyers were?

A. Philip O'Neil, Bruce Netterville, me and I believe Porteous was on that trip. One trip I was with Gucobbie and him and another trip, I believe it was some of his friends, some guy who owned a strip club who was friends with Porteous and I don't remember his name. He came and it was me -- something like that.

Q. Was it one of those trips when Gucobbie asked you for cash, that you mentioned earlier?

A. Yes.

Q. Do you recall who paid for Judge Porteous' hotel room on that occasion, on the first one?

A. I believe on that trip, it was me, Bruce and Philip.

Q. And Bruce and Philip's last names are?

A. Philip O'Neil and Bruce Netterville.

Q. So is it true you divided the cost of the hotel room?

A. Yes.

Q. And was there anything else you divided besides the hotel room?

A. I think I probably paid for the shows if we went to any shows or the drinks. With Porteous, I don't think I had to buy him drinks because -- I mean, I paid for the dinners and stuff but I wouldn't have had to buy him drinks because he was gambling all the time.

Q. Did you pay for his gambling?

A. No.

Q. In terms of the hotel costs that were divided, do you have any recollection of how much that cost you individually, if it was divided by three?

A. I don't know how much the rooms were, I

don't know how much the flight was then, you know.

Q. How many days were you there, do you remember?

A. It's hard -- I don't know. It could have been a week. It could have been four days, three days.

Q. Do you remember the hotel?

A. Again, you know, 25 times, you know, at the bail bond conventions, I've stayed so many places and done so many things in Las Vegas especially that, you know --

Q. Did you give him any cash on those trips?

A. No, I did not.

Q. Did you see anyone else give him cash on those trips?

A. No, I did not.

Q. Now, was your sister friends with Rhonda Danos?

A. Yes, she was close with Rhonda.

Q. Would they see a lot of each other?

A. Yes, they hung out a little bit together, you know, as far as the lunches and maybe they've done a few things together. They went out or something. I think Rhonda may have been single at some point. My sister was single. They might have

done things together.

Q. Did she go on either of these trips, do you recall?

A. Yes, she went on -- I don't know if she went on those trips but I know that she went on other trips. I don't know if she went on the first trip. Maybe she did but she went on the second trip, I believe.

Q. Now, when you all divided this money, the costs of the Nevada trip with Netterville and O'Neil, I guess you said, how did that come about? Did you guys just say, how do you want to handle this? Was there a prearrangement of dividing it? Do you recall?

A. I think we just split it three ways, you know, the expense.

Q. When you split it, did they give you cash for their portion?

A. I don't know if it was cash or a check or how they gave it. I know we split a bill at the Rosewood Grill for 2,000. It was a restaurant there.

Q. Now, at any point during these lunches and meals, did you ever tell the judge, look, I'm glad to buy you these meals but I expect you to give me this ruling or that ruling or to split this bond or that

bond?

A. No, I never. But I've asked him at lunches to split bonds at the table while we were eating.

Q. Have you ever asked him to split bonds in his chambers, when you were talking in his chambers?

A. Yes, I have.

Q. Sometimes could you not get into his chambers so you had to talk to him at lunch on busy days?

A. Yes, sometimes I couldn't get in his chambers or if it was a tough bond that I could get a "no," I always thought, you know, it's easy to tell someone no if they don't see you but if you look them in the eye, it's harder to say no.

Q. How often do you think you had lunch with Judge Porteous after he became a Federal judge?

A. You know, I would say maybe -- you know, I'm guessing because, you know, I can't recall but I think it's maybe five, eight times maybe.

Q. And usually, you mentioned you would go through Rhonda. Is that usually what you would do, that is, you would approach Rhonda to set up the lunches?

A. Yes, because, you know, Porteous wasn't

going to call the Beef Connection and make reservations and, you know, Rhonda is sitting there so I figured she -- like a pharmaceutical rep. She was the gatekeeper.

Q. Would Lori sometimes call Rhonda to set up the lunches?

A. Yes. I would call, Bridget would call. A lot of us would call her to set up the lunches. She would ask him and then she would set it up, and tell us where we need to be.

Q. Specifically for those lunches when he was a Federal judge, did you ever tell Rhonda, I'm going to take him out to lunch and I want to talk about these bonds or this business or did you just invite him to lunch?

A. I would never -- especially calling a Federal building and talking about stuff like that. I would just say -- I wouldn't want to be on the phone in the Federal building and I would say, look, I want you to groom this justice of peace so he could split bonds for me. I would wait until I saw him in person.

Q. No, I'm just asking whether, when you asked about the lunch, whether you told Rhonda, I would like to take him out to lunch to talk about

bond business?

A. No, I don't think I would say that. Are you talking about as he's a Federal judge?

Q. Yes, sir.

A. No, I wouldn't say that over the phone.

Q. Is that, in your understanding, illegal to ask a judge to talk about the bond business at lunch?

A. Well, in a State courthouse, probably, but a Federal courthouse, I don't know. Maybe I did. I don't know if I -- and most of the time, if we called the Federal courthouse, it would be my administrator calling and saying, hey, this is Bridget, you know, Rhonda, let's set something up with Porteous, let's get together.

Q. Did you have occasion to have lunch with a Judge Kerner?

A. Yes, I did.

Q. Who was Judge Kerner?

A. Judge Kerner is the justice of the peace in Lafitte, Louisiana.

Q. And did you discuss signing bonds at that lunch?

A. Yes, we did. And we were trying to groom him so, you know, we're kind of struggling -- not struggling but we needed more people in our circle.

We needed to expand the A team. So we needed more people in our circle to do bonds. And again, when Porteous came to the table, he brought strength.

Q. Sure.

A. And I figure that would -- you know, with Porteous saying, hey, the bail bond business is a good business, you know, reduce the bonds for him, then it gets back to court, that would weigh on Kerner and he would start doing what we asked.

Q. So let me ask you, do you remember what the judge spoke on at the bond conference when he went to Las Vegas?

A. Vaguely. A little bit. I think he was talking about people coming back to court and stuff like that.

Q. Could he have spoken about the value of giving people bonds and how they fit within the criminal system?

A. Right. And that's what he would have to speak about and tell the bail bondsmen and try to give them a little insight what he thought was good for the criminal justice system.

Q. Do you think, from your experience, that Judge Porteous viewed himself as one of the more experienced judges in dealing with bond issues, both

as a prosecutor and a judge?

A. I think he viewed himself as, you know, as more experienced but also, you know, more visible than the rest because his ties with the DAs and being up there and his friends in the DA's office.

I mean, the only one that could take the Federal Government out of there, the only one that could really bark at what he did and made noise and expose him would be the DA, and that was all of his friends up there. And what happens was here comes the big bad wolf.

Q. I'm sorry, who is the big bad wolf?

A. The Federal Government and that's what exposed us. The local government, we wasn't having no problems.

Q. Was it your understanding that judges were not allowed to have lunch with bail bondsmen in the parish?

A. No, I didn't know that. I mean, I thought that, you know, maybe the lawyers changed after they took me down. But before, I don't know. I thought that maybe it was okay.

Q. Did anyone ever tell you that it was against the rules for you to go out and buy lunch for a judge in Jefferson Parish?

A. No, until the prosecutors grabbed me and said, look, you can't do this with police officers. Any other part of the private sector, you can do it with but you cannot do this with police officers or judges.

Q. When you said that Kerner -- you said we wanted to work Kerner, generally, not those specific words, at this lunch. When you said we, are you referring to your staff?

A. I'm referring to my staff and Porteous because we were there to try to groom him.

Q. Did Porteous tell you -- I mean, let me strike that.

Did you tell Porteous, before going to that lunch, I would like you to come to lunch with Kerner and groom him?

A. I think maybe -- and I can't recall exactly but I think maybe Porteous and I were there before Kerner got there because I remember Kerner walking in, I think I remember Kerner walking in after we were all there and then I told Porteous, man, I need to get this guy to start doing some bonds for us. I need help with this guy. You know, it would be nice to have another justice of the peace, you know, to help us with these bonds to get them

done.

Q. You said sometimes you would go to judges' offices about getting judges to do more bonds. But occasionally would you go to a judge in their office and say, you know, it would be very, very helpful if this justice of the peace started to do bonds so that we didn't have to come to you or other judges? Did you ever have conversations like that?

A. Yes. Help us where we can wear someone else out and back off of you.

Q. Now, about this lunch at Emeril's with judge, I think it's Benge. Is it Benge?

A. Benge.

Q. Now, there is a lunch that we see in 2002 at Emeril's. Do you recall that?

A. Yes.

Q. Did you call the judge personally for that lunch or did you go through Rhonda?

A. I don't think I called personally. I think maybe my administrative girl, Bridget, called Rhonda and said, hey, see if Porteous wants to meet us as Emeril's, we're going to have Bodenheimer and Benge there and, you know, I think -- Bodenheimer and Benge there.

Q. And did you tell Porteous beforehand, I

want to talk to Benge about doing more bonds with us?

A. Again, Porteous came in late. I think at that point, Benge and Bodenheimer were already doing bonds with us but in my head, I thought that, you know, by using Porteous and bringing him to the table and having a Federal judge sitting there, that it would accelerate the amount of bonds that they were doing for us because, you know, we're bringing strength to the table.

SENATOR HATCH: Mr. Turley, we expect you to wind up about a quarter to. Is that okay?

MR. TURLEY: I'll just wind up, and -- thanks. Thanks. I have only two more questions. Is that okay?

SENATOR HATCH: You have some more time.

MR. TURLEY: Okay. Do you know how much more time I have?

SENATOR HATCH: I said we'll go to a quarter to.

MR. TURLEY: A quarter to? Great. Thank you very much. Because I did have another section. I'll try to wrap it up very quickly, sir.

BY MR. TURLEY:

Q. There is a quote in the record that says that Kerner kind of froze up. Do you remember the

judge's reaction at this lunch as sort of freezing up?

A. Well, he kind of figured out we were trying to groom him and he looked a little uncomfortable in the seating, the place that he was sitting, but, you know, maybe we just felt like, maybe it's nerves, the first time he's eaten with all of us. But then when we tried to use him, you know, he completely froze up.

Q. Let me ask you, Mr. Marcotte, is it true that some judges on the State level didn't do many bonds and other judges tried to encourage them to do more bonds?

Let me sort of explain the basis of my question. We talked about how some judges thought bonds and split bonds were a good thing. Do you recall that?

A. Right, right.

Q. Was it also true that some judges tried to encourage other judges to do more bond work to take the pressure off them?

A. Yes, they did.

Q. I'm sorry these questions are a little bit disconnected because we're running out of time.

A. No problem.

Q. Is it true that with the exception of these lunches, after the judge became a Federal judge, that you didn't give him any gifts or benefits of any kind beyond these lunches?

A. After he became a Federal judge?

Q. Yes, sir.

A. Other than the lunches. And I believe after he was a Federal judge maybe -- not me. Maybe someone else he went to.

Q. I'm talking about you.

A. Right.

Q. Do you recall who paid for those lunches, those lunches that we just mentioned with Kerner and Benge?

A. Oh, we paid them.

Q. Did you pay for Kerner and Benge as well?

A. Yes.

Q. One thing I wanted to clarify. Remember I asked you about the FBI coming to you during their FBI background check and then coming back?

A. Uh-huh.

Q. Do you remember those two things?

A. Yes.

Q. You indicated that you had lunch after each of those interviews. Are you confident about

that, or was there just one lunch that you had discussing the interviews?

A. No, I think after -- I think -- I'm almost 100 percent sure that after every interview with the FBI, I had lunches after and we talked about it, you know. Maybe if we had two or three lunches after, we talked about it each time.

Q. Now, you had mentioned that you had given cash to some judges, correct? Did you ever give Judge Bodenheimer any cash just as a gift?

A. No, I just gave him a check because he wanted his campaign contribution in a check.

Q. And you said some judges might have just put that in their pocket instead of giving it to the campaign?

A. Instead of putting it in the campaign fund, they stuck it in their pocket.

Q. Which judges did that, do you think?

A. If I had the list, you know, I could tell you but I would say, you know, probably 60, 70 percent of them.

Q. What else did you give Judge Bodenheimer in your recollection? What other types of gifts did you give him?

A. I did some repairs on his house.

Q. Is that it?

A. Yes, and took him to Beau Rivage, wined and dined him, went to dinner at night, plus lunch times and hung out with him and, you know, paid all the bills.

Q. And how about Judge Green. What did you give him of value?

A. I gave him the campaign contribution which he and I hid from the rest of the world which made it a bribe.

Q. When you say hid it from the rest of the world, you mean he didn't give it to his campaign? He kept it?

A. We didn't disclose it to the rest of the world. I knew that he was going to mismanage the money and put it in his pocket because he probably needed it but at that point, I thought it was my job -- it wasn't my job to figure out where he was putting the money at, but it was my job because I went to prison for it.

So I didn't care where he put the money, you know, as long as -- my lawyer even said it wasn't my job to figure out where he was going to put the money.

Q. Did he hit you up for money? Did he

specifically say, I would like you to give me money?

A. No, only for his -- yes, for his campaign, I mean, for his fund raisers.

Q. Did you have occasion ever to buy lunch for a member of Congress?

A. I don't know if I could recall.

Q. So for example, John Breaux or any other member of Congress?

A. You know, maybe my sister went with John Breaux. I'm not sure.

(Witness confers with counsel.)

MR. REGAN: One thing just to clarify with Judge Green. In addition to giving him cash, he was a frequent lunch guest. I mean, he would call the bonding company and say, let's go to lunch.

MR. TURLEY: I understood that.

BY MR. TURLEY:

Q. And that's what your recollection is?

A. Right.

Q. Can I ask you one question about this man Wallace? Are you familiar that Wallace sought an expungement of a sentence with Judge Porteous?

A. Yes, an expungement and I believe to set aside a conviction, his conviction.

Q. Did you secure counsel for him, Robert

Rees, or did he?

A. We were sending Robert Rees cases so he was going to help us because we were helping him. We were referring criminal cases to him.

Q. Did Robert Rees talk to you about that expungement request or the set-aside request?

A. It's been a long time. Maybe he told me, he's not ready to do this right now, he's going to do it after he's confirmed. But exactly verbatim word for word, I mean, it's a long time.

Q. Was your impression from Robert Rees generally -- and you may not recollect but was your impression generally from Robert Rees that this was viewed as a relatively routine matter or was it viewed as a very difficult matter?

A. I believe, you know, getting the record expunged is a routine matter but the way we went about it without -- you know, back-dooring it was not the right protocol.

Q. By the right protocol, I don't understand what you mean?

A. Meaning like we back-door the expungement. Is it ex parte when you talk about expunging a record, you know, at lunch? I mean, is that a ex parte?

MR. REGAN: Right, you're talking about without the DA's opposition.

BY MR. TURLEY:

Q. Did you ever pay for a limo for Senator Breaux to go to a casino?

A. Again, that would be my sister. She did, you know.

Q. And then my final question is, in terms of that Wallace business, were these expungements, when you sought an expungement of this kind, in your experience, would you go to an individual judge often in these expungements to ask a judge to expunge this case or that case?

A. Well, normally you go to the judge that it's allotted to. In this particular case, the case was allotted to Porteous so you would go to him. But in the Duhon case, we had Porteous go to another judge to seek and expunge it -- through -- my brother-in-law.

MR. TURLEY: Thank you for your patience and we can stop here if that's what you want.

SENATOR HATCH: Thank you, Counsel, and returning to the Congressman.

CONGRESSMAN SCHIFF: Thank you, Senator.

EXAMINATION BY COUNSEL FOR HOUSE COMMITTEE

BY CONGRESSMAN SCHIFF:

Q. Mr. Marcotte, I wanted to ask you, you began an answer and I think you may have been cut off earlier.

Mr. Turley asked you whether you did any work for Judge Porteous after he took the Federal bench, car repairs or things of that nature, and you started to say after he was a Federal judge, he went to -- and I didn't know where you were going and I think you were cut off at that point. Do you recall what you were referring to?

A. Well, I think he went to the Federal bench, is what I was trying to say.

Q. Were you suggesting that he went to somebody else for repairs or favors after he was on the Federal bench?

A. No, I think he -- I think I was saying maybe he went to Las Vegas, I believe, as a Federal judge to speak at a conference, but I could be wrong there, but not at my request. At someone else's request. Because I remember getting jealous because one of my -- a lady that used to work for me was able to get him there without going through me.

Q. Mr. Marcotte, I think several times throughout today you referred to Judge Porteous

bringing strength to the table or Judge Porteous was the most helpful. Was there any judge in the courthouse who was more helpful to you in your bail bonds business than Judge Porteous?

A. I would think for the duration of the time, it would be Porteous, then it would be Green and then Bodenheimer. Bodenheimer and Green were running pretty close neck and neck.

Q. And Bodenheimer and Green, did they both end up going to jail?

A. Yes, they did.

Q. When you described your lunches with Judge Porteous, you said that he would drink sometimes four, five or six shots of Absolut vodka?

A. I actually wasn't counting but anywhere between three and six, depending if we had to go back. There were times where we would drink at Ruth's Chris, you know, with other judges and stuff, we would stay there until 5:00 or 6 o'clock. So we would start at 12:00 and drink until 6:00.

Q. And was it during some of these lunches where he was drinking to this degree that you would raise bail bond business with him?

A. Well, the relationship became much closer and, you know, it became much closer and it's easier

for somebody to make a decision quicker when you're impaired to a certain degree. Again, he would always -- he had a high tolerance for alcohol but I think it would be easier for me to get something out of him when he had a buzz than sitting on the back of his office with, you know, just getting in and having a cup of coffee.

Q. You mentioned that some of the hard cases where you knew the task was going to be difficult for the judge, you didn't want to make in the office, you wanted to make in front of the judge because you said it's harder when you're face to face to say no?

A. Yes.

Q. Did you find it easier for you to get him acquiesce on what you wanted on the bail bond when he had been drinking?

A. Sometimes, and sometimes it was "no, go find someone else to do it." And we would shop it, beat it to death, go back, "no" again and then shop it a little more and then go back and I would wear him down and he would do it.

Q. You also said that you found he would do more for you depending on whether it was one of the times when you were doing more for him?

A. Absolutely.

Q. Can you explain what you meant by that?

A. I mean, like in his car was in the shop or, you know, we were going to lunch or, you know, before we went to lunch, he would be -- you would see a little spark in him to want to do it even more because -- he probably was thinking, oh, another bond, you know. But then if I was doing something for him, you would see a little spark in him like, okay, do the bond. Basically see where I'm going?

Q. It wasn't necessary for you to discuss with him the favors that you were doing for him when you asked him to set a bond a certain way, was it?

A. I'm sorry?

Q. When you asked him to set a bond in a certain way, you didn't have to remind him, hey, I'm repairing your car, did you?

A. No.

Q. You understood that he was aware what you were doing for him?

A. Yes.

Q. And you asked George Porteous at times for his help with other judges so that you didn't have to wear him out by bringing him bond after bond after bond?

A. Yes.

Q. And Judge Porteous knew why you wanted him at the table for these lunches with other judges, so that you could --

A. So that we could talk about bonds and, you know, groom them with not only conversation but with food and stuff that would -- you know, food, alcohol, whatever it took to I guess corrupt him.

Q. When you testified before the House, I wanted to ask you about some of the questions I asked you then and follow up.

I asked you about one of the interviews with the FBI. And Counsel, I don't know if you have this with you, if you need to refer to it. I'll read directly from it. This was your testimony before the House on page 70 of the -- report. And this is me asking you questions, Mr. Marcotte.

"But you would have made it clear to Judge Porteous you didn't tell the FBI the full extent of his drinking?"

And your answer was: "Yes, yes."

It also says, and I'm referring to the FBI report too, he has no knowledge of the candidate's financial situation. "Did you tell Judge Porteous that they had asked about his financial situation?"

And your answer was, "right. I would have

told them I don't know anything about his financial situation at that time."

Is that your recollection?

A. Yes, sir.

Q. And it asks you: "It also says he's not aware of anything in the witness' background that might be the basis of attempted influence, pressure, coercion or compromise, or that would impact negatively on the candidate's character, reputation, judgment or discretion. Did you tell Judge Porteous they had asked you that question, Mr. Marcotte?

"Yes, I did."

A. Yes.

Q. "And did you tell him that you told the FBI you weren't aware of anything in his background that might be the basis of attempted influence, pressure, coercion, or compromise or that would impact negatively on his character, reputation, judgment or discretion?"

Mr. Marcotte: "Yes, I did."

A. Yes.

Q. So you didn't tell the FBI then about the car repairs and the home repairs and the drinking or any of that?

A. No, I did not.

Q. And you understood, didn't you, Mr. Marcotte, that these were things that would affect the candidate's character, reputation, judgment and discretion, didn't you?

A. Yes, I did, and also lying to the FBI agents would cause me problems.

Q. Because it would expose your relationship with this judge and maybe others as well?

A. Well, just lying to the FBI about, you know, him not -- me not knowing about the cars and his financial situation and his drinking. I just wanted to see him get confirmed, because, again, he was good to me on the bench when he was there, and that's what he wanted.

Am I answering the question?

I'm really not good -- I'm good close to someone, but when I get too much distance --

Q. Do you want me to sit closer to you?

A. Yes, if you could.

MR. TURLEY: I could switch with you.

MR. SCHIFF: Do you mind?

MR. TURLEY: Of course. No problem.

THE WITNESS: That's why I'm having a little more harder time with you, because you're not close to me. I'm sorry.

BY CONGRESSMAN SCHIFF:

Q. You understood, Mr. Marcotte, didn't you, that if you had been honest with the FBI about his drinking, it might have negatively affected his confirmation?

A. Yes, sir.

Q. And you understood if you told the FBI that you had done these car repairs and home repairs and other favors for Judge Porteous, that would have negatively affected his confirmation?

A. Yes, it would have. And then if I had told them all that and he wouldn't have got his judgeship, then he wouldn't have been worth a damn to me on the State bench because I killed his appointment, something that his dream.

Q. So this would have been a major adverse consequence to your business if he didn't get confirmed and stayed on the State bench?

A. Yes, and all the judges in Jefferson would say I bashed Porteous so he couldn't get his -- and then him coming back to the bench, and I would have had the whole bench -- it would have destroyed me as far as the bonds.

Q. I wanted to follow up. After Judge Porteous was on the Federal bench, could you, if you

had to, use this information about your relationship with Judge Porteous to leverage a favor from him on the Federal bench? Could you have said to him, Judge, if you don't do this for me, I can go public with our relationship?

A. I would never do that, you know. But I would, again, ask him to do something for me, like try to get him where they set the bonds, you know, favorable to bail bondsmen in Federal court, you know, something like that. Or, you know -- but I would never, you know, extort him in any kind of way.

Q. You wouldn't extort him but you did have information that could potentially embarrass him to use his leverage on him?

A. But I would have never leaned on him that kind of way. I would do without before I would have leaned on him in that kind of way.

Q. Now, you did go to him on the Federal bench to try to ask him to intercede with a case that you were involved with that involved a no compete clause, right?

A. Yes, I did.

Q. And you asked him to help you with another judge in connection with that no compete clause?

A. Right. And I figured Greg Guidry was on

the Federal bench and he was on the Federal bench and you know, they probably ran across one another, or you know, maybe went to lunch with one another, were maybe kind of close.

And would he -- he was a DA, not a judge, Greg Guidry, in the Federal court before he came over to the State bench. So I figured that they had crossed paths and he knew him, and that, you know, with a Federal judge calling a State judge and say, look at this non-compete really close, I think it's ironclad, you know, would you take a strong look at? You know, would be beneficial to the Marcottes.

Q. And you felt you could make that request of Judge Porteous while he was on the Federal bench because of the relationship you had with him, correct?

A. Yes. Through the years, yes.

Q. But for all the lunches and the drinks and the car repairs and the fence repairs, would you have felt comfortable in going to a Federal judge to ask him to intercede with a State judge on a pending case?

A. If it wasn't Porteous or someone else on that bench?

Q. Correct.

A. No.

Q. I think you also said in answer to one of Mr. Turley's questions that you wanted to repay him, meaning Mr. Porteous, for what he had done for me, during the FBI interview?

A. Right.

Q. You felt grateful for all the bond business he helped you with?

A. Yes, I did.

Q. And I think you also said --

A. And not just grateful for the bond business that he did, the doors that he opened for me. Because as a bondsman, you know, no one is going to open -- I could have never opened all the doors that he did for me, you know, and the life of my bail bond business.

Q. So when he would agree to have lunch with you and with another judge, that was a real opening for you to that other judge?

A. Yes.

Q. I think you said in connection with the FBI interview that not only did you want to repay him for what he had done for you but you would have said just about anything, and Porteous -- you would have said just about anything?

A. Anything to benefit him.

Q. And did Porteous know that?

A. I think he knew that.

Q. Do you believe that's why you think he referred the FBI to talk to you?

A. Yes.

Q. He wouldn't have sent them to you if he thought you were going to --

A. Anything negative, he wouldn't have.

Q. Mr. Turley also asked you about court overcrowding and mandatory release. When you asked Judge Porteous to split a bond for you or reduce a bond for you, was he doing this, in your view, because you were asking him?

A. I would say yes, he was doing it because I was asking him; because, you know, a judge doesn't get anything personally, any gains for doing all those bonds for himself. You know, he -- what would he get out of it? He puts himself at risk that if somebody gets out and kills someone, his name is going to be in the paper and he has to run with a murder connected to his name. I mean, it happens all the time.

Q. Mr. Marcotte, on those tough cases where you would have to go back to him and go back to him

and as you put it, he would cave and would grant the bond reduction or what you were asking, I take it he took those actions because you wore him down, not because he was trying to help the court situation in terms of mandatory release?

A. Because I wore him down. In a perfect world, with a judge not asking for anything and a bail bondsman calling him to reduce bonds because they're going to get out of jail free, then that would be the right thing for all the judges to do, to take nothing and do them and protect the public because someone is there to hunt them.

But to expect something for doing it is -- is -- you know -- is really not what the criminal justice system is made out of.

Q. Judge Porteous knew your business well enough to know that when he would split a bond so that you would be able to do the bond, that made you money, right?

A. Right.

Q. And he knew your business well enough to know that if he reduced the bond to the point you asked --

A. It would maximize the profits. I'm sorry.

Q. Okay -- it was going to maximize the

profits for you?

A. Right.

Q. Now, some of the judges were not available to you and wouldn't accede to your bond requests, isn't that right?

A. Yes, a few would say, go get a lawyer, you know, a few.

Q. And the judges that didn't help you, I take it you didn't lavish them with repairs or lunches?

A. No, I did not.

Q. In the beginning on the car repairs, I think you stated that you may have volunteered to help with Judge Porteous' car but after that, Rhonda, his secretary, would call you and tell you --

A. Say, hey, Porteous's car is broken, hey, come get the key, you know, this is wrong, that's wrong. Or if we were at lunch and it wasn't a major issue where it was broken and sitting at the house or it's got a little knock in the engine or something, then he would ask at lunch, hey, my car is starting to sound bad, take care of it.

Q. You mentioned two employees of yours that you needed their convictions expunged to continue working for you. Can you tell me their names really

quickly?

A. It's Aubrey Wallace and Jeffrey Duhon.

Q. And Judge Porteous went and expunged both of those convictions even though one of them wasn't in his department?

A. In his section.

Q. Is that right?

A. Yes, sir.

Q. Were those two of the gentlemen that you had work on the repairs for Judge Porteous?

A. Yes, they were.

Q. One other item to clarify. I think you were talking about Adam Barnett. You made reference to earning $2,000 on a bond, paying the commission and then dividing up money from those proceeds of the bond to pay for a car repair?

A. Yes.

Q. So did the money for that car repair actually come from the bond that was --

A. In some cases, yes.

MR. SCHIFF: I think my colleague had some final sort of housekeeping questions.

MR. DUBESTER: I do. Thank you very much, Mr. Schiff.

MR. SCHIFF: Senator, would you mind if I

turn it over to my colleague here?

SENATOR HATCH: Sure.

EXAMINATION BY COUNSEL FOR HOUSE

IMPEACHMENT TASK FORCE

BY MR. DUBESTER:

Q. I'm flattered by the term colleague but I'll accept it. Mr. Marcotte, we're running very close on time. I'm going to ask you some questions. Most of them, you try to be helpful by explaining. Some of these aren't going to call for explanations. If you can answer yes or no, I think we might be able to move along.

First of all, Mr. Turley showed you that news article from September of '93 about Barnett, correct?

A. Yes.

Q. You're not saying -- and I take it that this was a significant event in terms of Judge Porteous having a negative feeling towards Barnett, is that correct?

A. Yes, that's correct.

Q. You're not saying that that was the only trigger which caused him to use you, is that correct?

A. It was a series of triggers.

Q. Right. And some of them could have been

before, some of them could have been after?

A. Yes.

Q. But this was one?

A. This was one.

Q. Second, you were asked a laundry list of people that you gave shrimp to. Did you give shrimp to Porteous?

A. Yes, I did.

Q. You were asked about a lot of people who you also took to lunch. Is it fair to say that Judge Porteous -- strike that.

Who among all the people, when Judge Porteous was a judge, did you take to lunch more than any other judge on the bench there?

A. Porteous.

Q. Is there any question in your mind about that?

A. No question in my mind.

Q. And some of these other judges you took to lunch, it was because you were taking Judge Porteous to lunch and he would bring these other judges with him, correct?

A. Right.

Q. And it was important to you -- why was it so good to you to have Judge Porteous bring all these

other judges with him?

A. Again, like I said, he brought strength to the table.

Q. And so you're a bail bondsman, you're perceived by many as in an unsavory business, you've got a high school education, you were a janitor at one point and you're sitting there with Judge Porteous, king of the court there. Is that helpful to you?

A. Yes, it is.

Q. And it's helpful with all those other judges who see you close to Judge Porteous?

A. Yes.

Q. Now, if you're paying $20 -- if you're paying five people are there $100 and Judge Porteous is there, in your mind, are you paying $20 for Judge Porteous's lunch or is that $100 in your mind that's going to Judge Porteous?

A. $100.

Q. Why is that?

A. Because I need him to groom everyone.

Q. Right. And it lets him be king of the table, it lets him repay his friends, it lets him be a big shot --

MR. TURLEY: I'm going to object. This is

now just stating the testimony for the witness. I haven't objected once but this is getting a little too far.

SENATOR HATCH: We'll permit the questions. I do think the objection has some merit.

MR. DUBESTER: Fair enough.

SENATOR HATCH: But you should be able to pursue what you want to.

BY MR. DUBESTER:

Q. Okay did you in your own mind perceive that by Judge Porteous bring his own friends where you were showering these --

A. Gifts.

Q. -- decent lunches, that you were also indirectly helping Judge Porteous by doing that?

A. Yes.

Q. And were there people that you saw coming to lunch at Judge Porteous' invitation that you personally would not have even cared about?

A. Right, there was.

SENATOR HATCH: Counsel, I haven't barred you from asking leading questions. You have every right to do that.

MR. DUBESTER: Okay, thanks, Senator.

BY MR. DUBESTER:

Q. Now, you were asked if there was a lot of drinking going on in lunches but of course that covers a whole range. Have you ever seen anybody drink as much as Judge Porteous at these lunches?

A. No.

Q. You were interviewed twice as part of the FBI background check, is that correct?

A. Yes.

Q. In your mind, are those distinct events or do you actually keep them separate in your mind or do you just know you were interviewed?

A. I knew I was interviewed.

SENATOR HATCH: Counsel, you have about five minutes left.

MR. DUBESTER: Understood.

BY MR. DUBESTER:

Q. Whether or not you have one interview or two interviews, is there any question that after the interview, you told Judge Porteous what the contents of the interview was?

A. I told him.

Q. Okay. You indicated -- there was a couple of questions of did you ever go to the judges because the magistrate was not available. Do you remember those questions?

A. Yes.

Q. But is there another reason that you wanted to avoid the magistrate?

A. Because they wouldn't do the bonds.

Q. So if you thought you could do better with Judge Porteous than the magistrate, was that the reason you went --

A. That was the reason I went to Porteous.

Q. It wasn't just because the magistrate was not available?

A. It wasn't.

Q. There were some questions about Ms. Danos, Judge Porteous' secretary, calling the jail. Do you recall those questions?

A. Yes.

Q. So she played an integral part of the system where Judge Porteous would set bond?

A. Yes, the gatekeeper.

Q. Now, did you also do things to help keep Ms. Danos happy?

A. Absolutely, whatever she wanted.

Q. So you took her to lunch?

A. Took her to lunch, took her to Vegas. Not me but my sister probably five times. Groomed her, took her out, whatever.

Q. There were some questions about whether the DA ever objected to bonds. Do you recall those questions?

A. Did they ever object?

Q. Yes.

A. Sometimes.

Q. But most of the time the DA was not part of this process, was he? In other words, you would go right to the judge?

A. Only on the big drug cases, he was part of the process. Other than that, he wasn't.

Q. Fair enough.

A. Big drug cases.

Q. And then there is a question about whether you volunteered or whether you were asked. Volunteer is actually sort of a conclusion describing the relationship.

If Judge Porteous said, my car is broken, and you said, I'll take care of it, do you consider that an ask or do you consider that a volunteer?

A. A volunteer and an ask. It's both.

Q. There you go. Now, finally, you indicated that you didn't really even feel or understand that you just couldn't give all these things to the sitting judges of the court there. Was that your

testimony?

A. Yes.

Q. So because Judge Porteous, he never told you, I can't take your car repairs, Louis, I'm signing bonds for you. Did he ever tell you that?

A. No.

Q. Did he ever say, you can't repair my fence --

A. No.

Q. He didn't say, you can't pay for me for Las Vegas because I'm signing bonds for you?

A. No.

Q. So the judge, the highest judicial officer in Jefferson Parish, is taking things from you. Does that give you some sense that it must be okay to give them?

A. Yes, it did.

Q. But let me make sure I understand it. The judges who are taking these things from you -- strike that.

You went to jail because you gave these things to judges, correct?

A. Yes.

Q. But just to be clear --

A. And lost everything, 6 million.

Q. And we're here because Judge Porteous still is a Federal judge?

A. Yes, sir.

Q. Even though he took those things from you, correct?

A. Yes.

Q. Now, I have one more question here. In 2004, after you pleaded guilty, you agreed to cooperate with law enforcement, correct?

A. Yes.

Q. And the FBI interviewed you a bunch of times, right?

A. Yes.

Q. You probably know the names of the agents off the top of your hand?

A. I'll tell you what, I'm not that good with names.

Q. And at that time, in 2004, did you ever, in the slightest -- your wildest dreams think that you were going to actually be called as a witness in an impeachment trial?

A. Never.

Q. So when you were saying things back then, you had no idea that in 2010, six years later, somebody was going to cover the same ground with you,

did you?

A. I had no idea.

Q. I want to ask you about one statement that you made at the time in October 15th, 2004. I'm just going to read you the statement and ask if it's true, okay?

A. Okay.

Q. This is just what the FBI said that you said, so they could have made a mistake when they wrote it up. But listen to this paragraph and say today whether it's still a true statement.

And this is a statement that is recorded that you made October 14th, 2004.

Quote: "Porteous waited until the last days of his term as a 24th judicial district court judge to expunge Aubrey Wallace's criminal record. Porteous did not want the fact that he expunged Wallace's record to be exposed in the media or discovered in his background investigation for the Federal judicial appointment. Porteous told Marcotte he, Porteous, would act on Wallace's expungement after he was appointed to the Federal judicial bench. Porteous told Marcotte he was not going to risk a lifetime judicial appointment for Wallace."

Is that a true statement?

A. That's a true statement.

Q. Okay. So when Mr. Turley asked if you had conversations with this lawyer who was involved, you had direct conversations with Judge Porteous about setting aside Wallace's conviction, is that right?

A. Yes, I did.

Q. And he said in substance, I'm going to hide that from the Senate because I don't want that to be known before they confirm me?

Isn't that what he said in substance?

A. Not in exactly those words but that's what he meant.

MR. DUBESTER: Thank you. I have no other questions.

SENATOR HATCH: I appreciate the cooperation of everybody involved.

(Whereupon, at 12:09 p.m., the taking of the instant deposition ceased.)

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

- - -

IMPEACHMENT TRIAL COMMITTEE

- - -

IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.

PRE-TRIAL DEPOSITION OF LORI MARCOTTE

- - -

C-L-O-S-E-D H-E-A-R-I-N-G

Washington, D.C.

August 2, 2010

IMPEACHMENT OF JUDGE G. THOMAS PORTEOUS, JR.

PRE-TRIAL DEPOSITION OF LORI MARCOTTE

CLOSED HEARING

- - -

MONDAY, AUGUST 2, 2020

United States Senate,

Impeachment Trial Committee,

Washington, D.C.

The pre-trial deposition of Lori Marcotte convened at 1:06 p.m., in Room SD-215, Russell Senate Office Building, Hon. Mark Udall, presiding.

Present: Senator Udall; Matt Nelson, Counsel for Senator Udall; Congressman Johnson, House Managers; Mark Dubester, Counsel for the House Managers; Jonathan Turley, Counsel for Respondent; P.J. Meitl, counsel for Respondent; Martin Regan, Attorney for Deponent.

Staff Present: Patricia Bryan, Senate Legal Counsel; Justin Kim, Counsel, Senate Impeachment Trial Committee; Thomas L. Jipping, Staff Director, Senate Impeachment Trial Committee; Elisabeth Stein, Counsel, House Judiciary Committee.

P R O C E E D I N G S

SENATOR UDALL: In the matter of the impeachment of Judge G. Thomas Porteous, Jr., the Senate Impeachment Trial Committee has authorized this pretrial examination at the request of Judge Porteous.

Before swearing in the witness for this examination, why don't each of us introduce ourselves for the record? I'm Senator Tom Udall, a member of the trial committee. Let's start here and go around from my right-hand side.

MR. KIM: Justin Kim with the Senate Impeachment Trial Committee.

MS. BRYAN: I'm Pat Bryan with the office of legal counsel.

MR. JIPPING: Tom Jipping, counsel for Senator Hatch.

MS. DUBESTER: Mark Dubester, counsel with the house managers.

CONGRESSMAN JOHNSON: I'm Hank Johnson, United States Congress, Fourth District of Georgia.

MS. STEIN: Elisabeth Stein, counsel for the House Judiciary Committee.

MR. MEITL: I'm P.J. Meitl. I'm one of the lawyers for Judge Porteous.

MR. TURLEY: Jonathan Turley. I'm counsel for Judge Porteous.

THE WITNESS: Lori Marcotte, the witness.

MR. REGAN: Mark Regan, attorney for Ms. Lori Marcotte.

MR. NELSON: Matt Nelson, Tom Udall's counsel.

SENATOR UDALL: The witness at the pretrial examination is Lori Marcotte.

Ms. Marcotte, please rise and raise your right hand for the administration of the oaths. Whereupon,

LORI MARCOTTE,

was called as a witness, and having been duly sworn, was examined and testified as follows:

SENATOR UDALL: As the parties have already been informed, this examination will last for up to three counsel. It is my intention that counsel for the House of Representatives will have the final 20 to 30 minutes. I appreciate counsel's cooperation of this division of time.

I expect to continue right on through the time divided, as I've just described. If the witness must have a short break, however, please let me know. Also, unlike ordinary depositions you may be

accustomed to, I highly discourage objections as to the form of the questions.

Unless a question is actually confusing to the witness, I will not sustain such objections. If the court reporter is ready, then we can begin.

MR. TURLEY: Thank you very much, Senator.

EXAMINATION

BY MR. TURLEY:

Q. And thank you, Ms. Marcotte. I know that you have able counsel here, Mr. Regan, and I believe you've also been deposed before; is that correct?

A. Yes.

Q. I'm not going to spend a lot of time going over the same rules. The two things I would encourage you to do is, first, Mary Grace can't describe your head motions/hand motions, so if you could answer verbally to questions for the record, that would be helpful to all of us. And second, if you'll allow me to finish the question, so we're sure what you're answering to -- it's something -- a lot of witnesses tend to jump the gun a little bit on.

But also, on my side, if I'm not being clear about anything, you can just stop me to say, I have no idea what you're talking about, or could you be more clear, or could you break that up. I have no

problem with doing that. So just let me know.

Are you okay with all those rules?

A. Yes.

Q. First of all, I'm going to ask you a couple of threshold questions in the case. One is, did you ever give cash directly to Judge Porteous?

A. No.

Q. Did you ever make a campaign contribution to Judge Porteous?

A. No.

Q. Did you ever work on a bond with Judge Porteous after he was a federal judge?

A. No.

Q. When did you start to work on bail bonds in your career?

A. In the late '80s.

Q. Do you have an idea of, like I said, late --

A. '89, '88.

Q. And what brought you into the bail bonds business?

A. My brother.

Q. And that's Louis Marcotte?

A. Yes.

Q. When you started with your brother, did

you start doing many of the things he did in terms of cutting bonds and securing bonds, or did you have a different function? I wasn't clear on that, was I, so let me --

A. The first starting part is what I was confused about.

Q. It was a badly crafted question. Let me start saying, when you started to work with your brother, what type of work did you do in the bail bonds business? What functions did you have?

A. If you're speaking about the late '80s, I was doing accounting work and bail also.

Q. And by bail, you were taking actual bail cases and getting them secured with courts; is that correct?

A. Yes.

Q. When you first started to work on bail bonds, did you work with Adam Barnett in that business?

A. Yes.

Q. And how did you know Mr. Barnett? Did you know him before you began working in bail bonds?

A. Yes.

Q. How did you know him?

A. Adam Barnett worked for a bail bondsman

years before. He had been in the bail bond business a while. I had gotten my brother a job working as a janitor at a bail bondsman where Adam had worked, so I didn't really know the business. I was in an auto title business at the time, but I got my brother a job as a janitor, and that's how I met Adam, when Adam was working for that bondsman.

Q. Did you want some water or anything? I didn't ask.

A. No, I'm okay.

Q. So is it correct to say that Adam had more experience in bail bonds than you or your brother at that time when you started?

A. Yes.

Q. Is that one of the reasons you all worked with him, was to gain from that experience?

A. No.

Q. Why did you work with him? What was the purpose of bringing him into your operation?

A. To make more money.

Q. And how would he do that for you?

A. Adam -- I'm just getting confused with talking. It feels like I'm starting in the '80s, and really, it progressed over time, and that's why I'm not sure exactly which timeframe.

Q. Let's start in 1989, is when you started and you were doing, if I'm correct, a mix of accounting and bond work; is that correct?

A. Yes.

Q. And when you started in '89, was Adam Barnett also working with you at that time on bond work in 1989?

A. He didn't work in the office. We were all paid a salary. Adam was a commission agent, and he would broker bonds through our office, so he would come sit at a desk on the telephone and try to make money.

Q. And why would you use Adam for that instead of just doing all the work yourself?

A. To get bonds reduced or split.

Q. So was he the person that was having the most interaction with the judges in those early years?

A. Yes.

Q. You seem pretty confident of that, so as you started out, he was the person who was generally going to the judges until a certain point?

A. Yes.

Q. Now, at that point, when he was doing most of the work, were you meeting socially with judges,

or was that pretty much after Adam left that you began to meet socially with judges?

A. That was after.

Q. And did he know all the judges? Is that what gave him a slight advantage in that regard?

A. I guess so.

Q. Do you know whether Judge Porteous knew him before or knew his father?

A. Yes.

Q. Which one?

A. Ralph Barnett.

Q. So it was Ralph Barnett that Porteous --

A. Yes.

Q. So at that time, would Adam Barnett just go to various judges to get bonds secured, or would he just go to particular judges?

A. I just remember him going to Porteous. Maybe he went to others. I don't remember.

Q. You don't have any recollection?

A. Huh-uh.

Q. That's fine. And we understand if you don't have recollection.

A. I remember he was playing golf with Porteous. That's why.

Q. Okay. Was it your recollection that, at

some point, Adam -- that you all stopped relying on Adam for this work? Is that your recollection?

A. Yes.

Q. Now, was that due to a controversy involving some bonds that he was involved in, that is, is the reason that you stopped this work due to some controversy?

A. It could be. Greed was another reason.

Q. Why greed?

A. Because we started paying Adam a lot of commission to get the bonds reduced, so he wanted more and more, and we became dependent upon him to do a lot of stuff.

Q. Would you describe him as a truthful person?

A. No.

Q. How would you describe his character?

A. He's really a character, a piece of work. That's how I would describe him.

MR. REGAN: May I speak to my client a minute?

(Witness confers with counsel.)

THE WITNESS: He was not a very honest person.

BY MR. TURLEY:

Q. What type of dishonest things was he known for doing, in relation to you and your brother? I mean, did you have particular things about his dishonesty that you recall? I mean, would he misrepresent things that he was doing or money he was taking?

A. Yes.

Q. I'm just trying to get an idea.

A. Yes.

Q. Can you explain that?

A. He would misrepresent money, get the bond lowered more, so he could make a bigger cut out of a commission. That's where the greed comes in that part.

Q. Let me go ahead and show this.

(Lori Marcotte Exhibit No. 1 was marked for identification.)

BY MR. TURLEY:

Q. Do you recall a controversy in 1993 involving Adam Barnett and a bond that made its way into the media?

A. Yes.

Q. Can you describe what that controversy was?

A. Adam put his house up for a bond, like a

surety for the bond, and collected money on it from our office.

Q. Were you all surprised by this controversy, or did you know about it beforehand?

A. I really wasn't that much involved in this case.

Q. Were you and your brother upset about the controversy when it got into the media?

A. Yes, I remember going to see a criminal attorney with my brother at that time.

Q. Now, was it this event that was -- was this around the period where you stopped using Adam Barnett?

A. It seems around this time to, yes.

Q. In front of you is an exhibit that we've marked Exhibit Number 1, and it's a single page. It's an article in the Times Picayune, entitled, "$80,000 house is used as surety for $200,000 in bonds."

And over in the corner, you'll see a small box that says, "Times Picayune," and below that, date edition, 9/14/93. Do you see that?

A. Yes.

Q. Do you recall this article by any chance?

A. No, I do not.

Q. Do you want to look at it? Is this what you were referring to earlier about the controversy, when you said he put up his house?

A. Yes.

Q. Take your time.

A. Okay. What's the question again?

Q. Having looked at the article, was this the controversy that you were referencing earlier about Mr. Barnett and his house?

A. Yes.

Q. And is this about the date that -- it says 9/14/93. Is this roughly what your recollection was in terms of time period when you stopped relying on Adam for your work?

A. Yes.

Q. So I'm going to ask you questions before then and after then, to get an idea of what was going on in the parish. You had said that, until you stopped working with him, he was the primary contact with judges; is that correct?

A. Yes.

Q. So is it fair to say that, after 9/93, that's when your brother and you began to have more contact directly with judges?

A. No, it was before this too.

Q. Can you give me an idea whether, for example, how much contact you had with judges before '93, as opposed to after you stopped working with Adam?

A. After we stopped working with Adam, we started to use some attorneys also because Adam was acting kind of like an attorney. We went to use attorneys, and from there, then we started seeing judges, but we still used Adam.

If there was money on the table, we wanted to make money, so if Adam came with a bond or we had a really difficult bond, we still used Adam, I think maybe even after -- for sure after this because I remember, so we didn't like totally ever stop.

Q. Okay. You mentioned, after '93, you started to deal with judges. Did you have more contact with judges after 1993 than you did before?

A. Yes.

Q. We're going to be talking about the lunches with judges later, but did those lunches primarily begin after '93, as opposed to before?

A. No, before.

Q. How often would you have lunches with judges before 1993?

A. I would say in '92, '91. It's a long

time. I really don't remember exact dates.

Q. But how regular were those lunches before 1993?

A. In '92, pretty often.

Q. And which judges would you often have lunch with in '92?

A. With Judge Porteous.

Q. And who else?

A. I think Judge Green, Judge Chechardy. I don't know if she was elected in '92. Again, the dates are pretty -- it's a long time ago.

Q. Did your contact with judges -- you indicated your contact with judges increased after '93; is that still true?

A. Yes.

Q. Was it a significant increase after '93?

A. Well, from '92, as I think that's the time when we started to go to lunch with Judge Porteous and after that, he facilitated relationships, helped us facilitate relationships with other judges that were elected, so, yes, from '92 and from that time on.

Q. So you would say it probably started in 1992, when you started to have lunches?

A. Yes.

Q. And your recollection is you continued to work with Adam after this particular controversy?

A. Yes.

Q. When you worked with Adam, did you ever go with him to the courthouse on bond matters?

A. Yes.

Q. When he would go and see a judge, would you often go with him, or would you wait in the hall?

A. I would wait in the hall.

Q. Why is that?

A. Because Adam wanted to keep his connections with the judges to himself.

Q. Did you, during that period, often meet with judges alone, or was it primarily Adam that met with the judges alone?

A. Say the question again.

Q. In, let's say, 1992, did you often meet in 1992 with judges alone, or was that still primarily Adam who would meet with judges alone?

A. I think it was towards the end of '92. Maybe it was the beginning of '93. Again, I'm not exactly sure on the date, '92, '93.

Q. But you seem to have an idea that, around that date, you started to have more interaction with judges; is that correct?

A. I remember waiting outside the hall with Adam, of Judge Porteous' office, and at one point, he introduced me to Rhonda, Judge Porteous' secretary, and then after that, I called Judge Porteous myself on the telephone, and he split a bond for me or set a bond. I don't remember which it was.

Q. And by Rhonda, you're referring to who?

A. Judge Porteous' secretary at the time.

Q. And her last name is?

A. Danos.

Q. Rhonda Danos. And you spent a lot of time with Rhonda, didn't you?

A. Yes.

(Lori Marcotte Exhibit No. 2 was marked for identification.)

BY MR. TURLEY:

Q. Ms. Marcotte, I'm handing you an exhibit that is a single paragraph. We've marked it Exhibit 2. It was previously marked, "Impeachment Task Force Deposition Exhibit 9," and you can see that yellow sticker in the corner. Do you see that?

A. Yes.

Q. This is a picture of two individuals. I believe one of them appears to be you, but can you tell me who is in the picture?

A. Yes. I'm the one with the hat on.

Q. Do you remember where this was taken?

A. In Las Vegas.

Q. Why are you both dressed the same?

A. Because we had those T-shirts made -- I had them made, actually.

Q. Who is the other person?

A. That's Rhonda Danos.

Q. Were you all friends?

A. Yes.

Q. On this Las Vegas trip, did you hang out with her a great deal?

A. Yes.

Q. What type of things did you do on the Las Vegas trip with her, do you recall?

A. We went to shows, gambled. She taught me how to play blackjack; those T-shirts.

Q. Is it safe to say you developed a relationship with Rhonda before you developed a relationship with Judge Porteous?

A. Yes.

Q. And after Adam Barnett introduced you, did you begin to see Rhonda outside the courthouse for lunch or social engagements?

A. Not really. I think twice. I had a party

at my house once that she came to, and I can't remember exactly what the other one was.

Q. How about lunches? Did you go out to lunch with her sometimes?

A. Not that I recall.

Q. With Rhonda?

A. Not alone. In Las Vegas, we did.

Q. And when you met with her on these occasions, did you only talk about the bond business, or did you talk about personal stuff as well?

A. We talked about personal stuff too.

Q. Did you talk about family, things like that?

A. Family was my brother and my sister and my parents at the time, yes. I do remember another time. New Year's Eve, Rhonda and I got together and went somewhere with her friends too, it wasn't often.

Q. Did you celebrate New Year's Eve with her that year?

A. Yes.

Q. What year was that?

A. It might have been this year, '93.

Q. This was in 1993, this picture?

A. (Witness nodding.)

Again, on the dates, it could have been

'94.

Q. When did you no longer have dealings with Adam Barnett? Do you remember what year that stopped?

A. We continued to have business dealings with Adam Barnett.

Q. Until when?

A. Until we got out of the business.

Let me rephrase that.

Until I think he went missing on some bad check somewhere or something, he disappeared, and it was after that, that our business ended.

Q. How many times do you think you had lunch with Rhonda Danos with other people present? You said you went out with her a few times alone. How many times do you think you went out with her with other people?

A. Hundreds, maybe.

Q. Would you routinely just invite her to come along to lunches?

A. Either we would invite her and the judge, or they would call us and invite themselves.

Q. Did Rhonda ever come to these lunches when the judge could not?

A. I don't remember any. It's possible.

Q. Was Rhonda at most of the lunches when you would go out with Judge Porteous?

A. Yes.

Q. Now, how many times did you think you went to Las Vegas with Rhonda? Do you recall? Was it just this once, or was it more than once?

A. It was more than once. Three times, myself personally, and then she came every year to Las Vegas.

Q. With you or --

A. With our company. This trip, I invited her to come, and then the next trip, yes, I invited her again, and there were probably trips after that where I invited her also.

Q. Was that during the bonds convention or conference?

A. Yes.

Q. And when you say that she came every year, would you pay for her every year or she just come?

A. No, we would pay for her every year.

Q. How many times do you recall Judge Porteous going to Las Vegas with you?

A. I've never been to Las Vegas with Judge Porteous.

MR. REGAN: Can I speak to her for one

moment?

(Witness confers with counsel.)

MR. REGAN: Thank you.

MR. TURLEY: No problem.

BY MR. TURLEY:

Q. When Rhonda would go on these trips with you, would you spend time usually on those trips with you? When you said she went every year, would you generally see her every year on these trips?

A. In this trip, we stayed in the same room.

Q. Oh, you shared a room?

A. Yes. Only the first trip, we shared a room. After that, we got her, her own room, and we kind of made Rhonda the person of -- the activity person, to plan all the shows and gather all the people, kind of made her the social event person.

Q. So she would sort of help organize these later trips, you mean, in Vegas?

A. Yes. We wanted to spend money on the people that we brought there.

Q. And who did you bring there generally on these trips?

A. People from our office, a couple of people that work at the jail, and other people in the bail bond business.

Q. Would you sometimes bring judges to Las Vegas on these trips?

A. Yes, the company did. Again, I've never been to Las Vegas with a judge, but my brother was in Las Vegas with Judge Porteous twice, I think.

Q. And I don't mean to interrupt.

A. And so was Rhonda also. Like when my brother went to Las Vegas with Judge Porteous, Rhonda also went, but I didn't go that trip -- no, wait. Rhonda didn't go. I wasn't there. That's why I'm not really sure.

Q. And there is no need to push yourself. If you don't remember, that's fine.

A. Okay. Thank you.

Q. What other judges were you aware of going to Vegas with your brother or with the company?

A. Judge Gucobbie.

Q. Did y'all pay for that, do you recollect, his trip?

A. Yes.

Q. Who else? Anyone else?

A. As far as judges? No.

Q. Is your answer that there might have been others or you don't know them or you know there weren't others?

A. I don't recall any other judges, no.

Q. So Rhonda began to do some of the social scheduling, is what you had explained on these trips?

A. Yes.

Q. Would you tell her in advance -- you know, we have a trip coming up to Vegas to get her to do that in advance? Or how would it work? Would you tell her about the date of the convention -- is it convention or conference? I don't know how to refer to it.

A. The convention.

Q. Would you call her and say, well, the convention is like next month or something, so she could start to look for things to do?

A. Well, they put out an agenda, the association of Louisiana -- of the United States bail agents, put out an agenda for the conference -- you know, when we would be in class, and then when we would be free, so we would schedule the activities around that.

Q. But would she get that agenda? Because she's not in the bail bonds business. Would it come to you, and then you would call her?

A. Yes.

Q. So is that how it would work, you would

get this thing in the mail or whatever, and you would call her and say, The convention is coming up?

A. Yes.

Q. Did you give her any guidance on the type of social things you want to happen, like you should go and get -- you know, tickets to Cirque de Soleil or something? Did you ever make suggestions to her like that?

A. I didn't really know that much about Vegas until our first trip, so I wasn't an expert on Vegas, and I thought she had been there before.

Q. So how would she do it? So would she give you, when you get to Vegas, would she just say, look, here's a couple of things we can go to or shows that are here? I'm trying to get an idea of how she would lay it out for you.

A. Well, we wanted to spend money to make her happy, to make the people from the jail happy, and make our workers happy, so we wanted the best, and we had a heavy cash flow at that time, so spend the money pretty much, is kind of how that went down.

Q. Did you put a cash limit, like try to keep it below this amount for a show, or did you just pretty much let her come up with ideas?

A. Well, pretty much all the popular things

that were around the same price. I'm thinking, like the Blue Men, $150 a person; Siegfried & Roy, maybe the same thing. So pretty much, it's competitive.

Q. Did she also arrange like transportation? Would she help with that too, trying to figure out how to get people from point A to point B?

A. Yes, yes.

Q. Was that usually just by taxi, or did you all rent limos, or how did you go around?

A. Not when I was there. By taxi.

Q. Would she have some money to pay for taxis, or would you all just pay for the taxis for all of your guests?

A. We paid for everything.

Q. Did she ever pay for anything and ask for reimbursement in doing these social things? Like on occasion, does she pay for, I don't know, show tickets, and then ask you to reimburse her?

A. Not for show tickets, no. We paid for her to have a massage or her toes done or her hair done. We paid for those kind of things too.

Q. But how about for others that she was doing the social scheduling for, did she ever cover those and then seek reimbursement?

A. For -- I think it was Judge Porteous' trip

with Gucobbie, the ticket. We reimbursed the ticket.

Q. Now, does she help you arrange social functions as well back in Gretna? Did you use her for the same purpose, sometimes, to help you out organizing parties?

A. Lunches, yes.

Q. How about a Christmas party at the Blue House? Is that what you referred to? You all call your former business the Blue House? Am I correct?

A. That's correct.

Q. Did she help you on occasion, on at least one occasion, plan and prepare for a Christmas party at the Blue House?

A. Yes.

Q. Do you remember what year that was?

A. I don't know. '92, '93.

Q. You're talking to someone who has a terrible memory. So you're thinking maybe early '90s?

A. Yes. That year we had remodeled our office, and since we were now rubbing elbows with Judge Porteous and opening doors to other judges, we wanted to show off our office, that we were professional people -- you know, we didn't have a little shack on the corner.

We wanted to show we had a beautiful office, so we rented a Santa Claus and had Santa Claus. We had a little jazz band, and really, the whole courthouse came to see. It was kind of like a coming out party, so to speak.

Q. And when you say the whole courthouse came to see, was there a lot of judges there?

A. People from the jail and clerks, criminal clerks, people that could help us in the bail bond business that would call in bonds, and Rhonda was there, some of her friends that worked at the courthouse, too.

Q. Do you remember how Rhonda helped out? Was she the one that got the rented Santa Claus or the band? Or do you remember how you guys divided up the work for that party?

A. I don't remember.

Q. Was she good at preparing parties? Did she know a lot of places to go?

A. Yes.

Q. Did you ever go to music concerts with her?

A. Yes.

Q. Was one of those a Rolling Stones concert?

A. Yes.

Q. Now, I think that was reported as October 1994. Is that what your recollection was?

A. I couldn't say. It was a long time ago.

Q. Was it just the two of you?

A. No. We had brought another judge with us.

Q. Who is that?

A. Kernan "Skip" Hand. He didn't ride with us, but I don't remember if we bought the tickets or I don't know how it came about, and his girlfriend at the time he was with.

Q. Did you like Rhonda?

A. She was fun.

Q. Do you think she viewed you as a friend?

A. I don't know. The reason I hesitate that is because, on one trip, I don't know if it was the trip after this, the second trip, at one point, Rhonda started to work for a travel agency, and she was making commission on some of the tickets, so she was real eager to book tickets, so she could make a commission.

And I was dating a man at the time, and he was going to come with us on the trip, and I got in an argument with him or something, and he ended up not coming, and I had the extra ticket, so since Rhonda's a ticketing agent, I said, Rhonda, while we

were at the airport in Las Vegas, I said, why don't we get a refund on this ticket?

And she said, well, you can't get a refund on plane tickets, and I kind of knew that, but since she was a travel agent, she didn't even ask, and I kind of, at that point, I was like, it's really just about the money. So I went to the counter and I told the lady, listen, this guy is not coming, if you could issue a credit on the other person's name, so they wanted to give me a ticket, I don't want to buy this guy a trip to Las Vegas. It's on my credit card, the company credit card. I really would like a credit.

The girl was really -- to like show that I could get it done, she credited the credit card, and I just turned to Rhonda, and I said, see? And after that, I didn't feel the same about her. I knew it was about money then.

Q. So this was sort of a falling-out at that point?

A. Yes.

Q. And when you said it was just about money, you decided that she was less interested in your friendship than the money, you mean; is that correct?

A. Yes, and us too probably, too, interested

in making money too, but since she was making commission and she got a trip to Las Vegas, I'm sure the commission was a way lot less than what we had spent, so it would have been better to try and help me get the -- at least try, if they had told her no, like if she tried to help us get some money back.

Q. So this was about 1996-'97 that that falling-out happened?

A. I'm trying to think of the time I dated that man. Let me see. Give me a second to think about that.

Q. Sure.

A. That sounds about right.

Q. So during that period, your understanding was she was working for the judge, but she was also doing travel arrangements on-site?

A. Yes.

Q. Do you remember the company she was with, by any chance?

A. Trips Unlimited.

Q. Now, I want to get to the bonds thing for a second about some of your recollections. Were you aware whether Judge Porteous had a reputation for not liking to do bonds in drug cases?

A. I didn't know.

Q. Now, you said you were never in Vegas when Judge Porteous went on any trip; is that correct?

A. I think what I said, and what I meant to say, if I didn't say it another way, was I didn't go with him to Vegas.

Q. Were you ever in Vegas when Judge Porteous was in Vegas?

A. I don't remember. I remember him scheduled to speak, and I think he didn't show up the year I was there, and the year he did speak was another time -- speak at the convention, I wasn't there, so I really don't think so.

Q. Now, do you recall that occasion when he spoke to the convention? Was he speaking to the convention on bonds, on the bond subject, to the best of your recollection?

MR. REGAN: Just objection, if she knows. You said you weren't there.

THE WITNESS: Yes.

BY MR. TURLEY:

Q. But from your brother.

MR. REGAN: Were you told?

THE WITNESS: Well, I was a member of the association, and we got letters of who was speaking and what, but I don't remember who he was speaking

about.

BY MR. TURLEY:

Q. Was it your impression that Judge Porteous was very experienced on bond issues, both as a prosecutor and as a judge?

A. Yes.

Q. Was Judge Porteous known as a judge that knew a lot about the bond process?

A. Yes.

Q. Was he considered, to your knowledge, one of the more experienced judges in handling bond issues?

A. Yes. Judge Porteous was pretty brilliant.

Q. Now, I'm going to ask you a little bit about splitting bonds.

A. Okay.

Q. During the 1990s, the jails were under a court order for overcrowding; were they not?

A. What year?

Q. Actually, during the entirety of the 1990s, was it your understanding that the jail was under an overcrowding order?

A. I don't recall how early it started, but, yes, there was jail overcrowding.

Q. And were people being released under

mandatory release orders because of overcrowding?

A. Yes.

Q. To the best of your knowledge, did you know of problems in having those people come back once they were released mandatorily? Did many of them not come back?

A. We tracked who didn't show up for the bonds that we needed to chase the people after, but, yes, and the association did some studies on free bonds versus commercial bonds. It was a good sales pitch to promote our business.

Q. And by that sales pitch, did you often tell judges that prisoners released without bond had a lower percentage of returning to the court?

A. Yes, that's fair to say, yes.

Q. Now, were there many judges, in your experience, that believed that it was better to put a bond on someone than to have them mandatorily released for that reason?

A. I think, after they heard that several times from Judge Porteous, they believed that.

Q. Was it just Judge Porteous or did other judges believe that having bonds on prisoners helped guarantee that they would return?

A. Yes, other judges and some judges like to

let people out free anyway.

Q. Was there a significant problem in the parish with having people disappear and not return to court after they were released mandatorily?

A. I don't know what you mean by significant. Can you be more specific?

Q. Well, was this something that was often discussed among judges and lawyers, the problem of having people just disappear after mandatory releases?

A. Of course, people were attached in court, and we made a lot of bonds on people that had missed court, that had got out, overcrowded, or got released free that didn't end up going to court, we ended up making a bond on a lot of those people too.

I would think that that would have been a problem, people not coming back to court, if no one is chasing them.

Q. Let me ask you this, Ms. Marcotte: You said that, after they heard our pitch -- is I think the term you used -- did you believe that pitch, when you were telling judges, it's better to have these people bonded than to have them released mandatorily, did you believe that that was true?

A. Oh, yes, yes.

Q. Why did you believe that was true?

A. Because if they didn't go to court, we had to pay, and we didn't want to pay the bond, the full face of the liability on the bond, so we definitely would go hunt them down. We had bounty hunters and a police force and a lot of expense to clean that up.

Q. So if they didn't have the bond, then there was really no one hunting them, except the police?

A. Yes.

Q. And did the police in the parish usually hunt these guys down, or was that a high priority for them?

A. No.

Q. Now, I'm going to go to split bonds for a second. Were you aware of judges before Judge Porteous doing split bonds? I mean, was that a practice before Judge Porteous became a judge?

A. Not that I could remember.

Q. Is it your belief that Judge Porteous was the one that helped invent split bonds?

A. I had come into the business around the time I got to know Judge Porteous, so, yes, in my experience, that's really the only person I had known to split a bond.

Q. Really? You didn't know of any other judges that split bonds in the parish?

A. Not that I can remember.

MR. DUBESTER: I'm just trying to clarify, not to interrupt. I can't tell if the question is when she first started the business or during the time that she was in the business. That's all.

THE WITNESS: Thank you. I was assuming you were asking me before Judge Porteous split bonds. Is that where --

BY MR. TURLEY:

Q. I'm going to continue with the questions.

A. Okay.

Q. Did you have much knowledge, before you went into the business, of what judges were doing at all, in terms of bonds or split bond?

A. No, I really didn't know anything about the business.

Q. So is it true to say that, if judges would have been splitting bonds, you wouldn't have known about it?

A. Yes.

Q. And then, when you began in the business and then after that date, did you know of, during your career, other judges splitting bonds?

A. Yes, and I want to back up to the other question.

Q. Sure.

A. I worked at the auto title company for the bail bondsman, Rock Hebert, Hebert Bond, where my brother had actually learned the business. I wasn't in the bonding business, but I heard my brother talk of stories of stuff like this going on, all kind of things going on way back when, and this man owned some property and would make a bunch of bonds and get a lot of fees to do that, and I don't know, maybe that was legal at the time.

I just kind of overheard this kind of thing, but I really was never directly involved with any of that. I wasn't in the bail bond business. So back to did I know of any judges? No. And the practice of this kind of stuff was -- I really didn't have any direct knowledge, but hearsay on this.

Q. That's fine. Let's go back. I understand that was before you got into the business. I can understand that entirely, but after you got into the business, you said, yes, you did know other judges that split bonds; is that correct, during your career?

A. Yes.

Q. Did most of the judges split bonds in the parish?

A. I would say so.

Q. Now, were they all splitting bonds for corrupt purposes or do you think many of those judges split bonds because they thought it was a good idea?

A. For both.

Q. Was there a reason to split a bond other than corrupt purposes? I mean, is there a valid reason to split a bond?

A. Sure. To have a commercial bond on the Defendant to have them come back to court.

Q. So can you explain a little further to some of us not in the bond business? Why did some judges think it was a good idea to split bonds?

A. Instead of the people getting out free --

MR. REGAN: Carry on. Why is that? What is the logic behind it?

THE WITNESS: Because if we didn't go to court, we would have to pay the bond, so no matter if the bond is little or big, if there is a bond on the person, then we're going to go chase them.

MR. REGAN: And who chase them?

THE WITNESS: The bounty hunters.

MR. REGAN: And the Jefferson Parish

sheriff's department didn't do that, did they?

THE WITNESS: No, they had a warrants and attachment division, but really, it was whenever somebody got stopped for a ticket, they ran the name, they would bring them in.

BY MR. TURLEY:

Q. So it was sort of by accident that they would nail these guys on traffic?

A. Yes.

Q. Were you aware that, sometimes, bonds were set initially too high in the case and that judges would sometimes split the bonds because they would correct that problem?

A. Yes.

Q. And did that happen -- fairly happen, that the bond was just set too high, and then later, they split the bond to bring it down?

A. Yes.

Q. And tell me how that worked. Is it true that, sometimes, a judge would have one idea of what a case involved and set the bond high and then later find out that it didn't involve such serious conduct? Is that the type situation?

A. Yes.

Q. Now, when you wanted to get a judge to

sign off on a bond, you had said that, initially, you went with Adam, and you would stay in the hall and then eventually you began to meet with judges, correct?

A. Yes.

Q. When you needed a judge to sign off on a bond, would you sometimes go to the courthouse late in the day and just try to find a judge in their office for that purpose?

A. Yes.

Q. And how would you do that? Would you just ask around what judge is here right now? Is that how it would work?

A. Yes.

Q. How would you ask? Like the guards or something?

A. Go in, shopping it around, like going in each judge's office, seeing who was around.

Q. So were like the doors open where, like in Congress, you could go down the hall and see if someone is in or something?

A. No, they have a secretary. If the judge is gone, usually his secretary is gone too. You could ask whoever is in the office. A criminal clerk, a civil clerk, and a bailiff. Is the judge

here? No. Is the judge here?

Q. Was Judge Porteous known as a judge that was a hardworking judge?

A. Can you be more specific?

Q. Well, was he known as a judge that tended to move his docket faster than other judges, for example?

A. I really don't know the statistics on that.

Q. You say that he was a really smart judge. Was he a respected judge?

A. Yes, very respected.

Q. And why was he respected? Was it just because he was smart?

A. Well, he had really good legal mind, Judge Porteous. He was very funny too, funny guy, what a card, but he worked in the district attorney's office, so I think he had a lot of experience in the legal system on all sides. He was smart enough -- you know, to get picked to get appointed, I guess.

Q. Ms. Marcotte, let me ask you: In terms of the district attorney's office, if the district attorney objected to a bond, was it your experience that, generally, the judges would not agree to the

bond?

A. Yes.

Q. And did that occur on occasion where the district attorney said, look, we don't want a bond in this case?

A. I don't recall one specific one. At one time, they started to put a code VP, vertical prosecution, on some people, so they started to put that on the jail inventory sheet, and that would let a judge know this guy is a multiple bail, to set the bond high, if that's what you're asking me.

Q. It was a VP?

A. Yes.

Q. Do you know what that stands for?

A. Vertical prosecution.

Q. Oh, okay. Do you know, generally, where they would write VP? Was there a separate box or did they just write it on top or --

A. It was actually 6 VP, code 6 VP. That was this guy's multiple bail. I think that's what that meant.

Q. Do you know when they started doing that?

A. No. I would think -- wait. I don't know. I remember they put this guy George Hessni in charge of that department in the DA's office, so whatever

year that was.

Q. Was there someone in the DA's office that was following bonds? Was there someone that was designated in the DA office, as sort of the -- who would keep track of bonds, or is that just each individual prosecutor kept track of them in their cases?

A. I really don't know, but I can tell you this, that Adam went to the district attorney's office a couple of times and had somebody from the DA's office call Judge Porteous' office saying, we don't object. So I don't know who that was or what, but I know that happened a few times.

Q. And why do you think they did that with Judge Porteous, have him call up to say, we don't object, like that?

A. I think Judge Porteous would say, Adam, get someone to -- something to hang my hat on, or if Adam would say, they don't object in the DA's office, maybe Judge Porteous didn't believe him, so maybe he had to go prove it. I don't know exactly why. I'm just speculating right now.

Q. That's fair enough. Are you familiar with a standard operating procedure, where Judge Porteous would have Rhonda call the jail to confirm facts on

bond cases before he signed off?

A. Yes.

Q. And was it your understanding he asked her to, generally, do that for all bonds, to call and confirm basically the rap sheet type of information?

A. Yes.

Q. Did Judge Porteous ever turn down any of your bonds?

A. Yes.

Q. And what were some of the grounds that he would turn down bonds with you, do you recall? Was there any like pattern?

A. No. Most judges, again, violence or quantities of drugs, fair bail.

Q. Did Judge Porteous ever talk to you about -- or did you ever hear him speak about the need to lower bonds because of the Constitutional requirement of a fair bail?

You just referenced fair bail. Did you ever hear Judge Porteous talking about the need for bail to be lowered to satisfy the constitution?

A. No, but we made that argument a lot because we wanted to make the bonds. We had to book and -- you know, the family can't afford it. What is fair? If they don't have the money, then can they

afford it? That's kind of like with our argument.

Q. When you split bonds, what do you think was the percentage of people that would come back to the court when you split a bond? Do you have any idea what the rough percentage was, as opposed to bail jumpers?

MR. REGAN: In which year? Is there differences in years?

BY MR. TURLEY:

Q. I was going to ask you just sort of for your entire career with the bail bonds unlimited, if you had maybe a rough idea of those with split bonds, did host of them come back or did half of them come back?

A. Split bonds comparing to what, free bonds or nonsplit bonds that are commercial?

Q. I guess split bonds compared to free bonds.

A. I really don't know the percentage. More people came back on a commercial bond because we went to get them.

Q. Now, when you had to go and get these bonds, there was a judge that was designated every week as the magistrate judge, correct?

A. Yes.

Q. Now, this was just a judge that was given that job by rotation; is that correct?

A. Yes.

Q. That is, you would do it one week, and then another judge would do it another week?

A. I think it was done by rotation, but there was also a justice of the peace, and then later on, commissioners were appointed by the judicial, 24th judicial, that would have bond hearings too, so the justice of the peace would go in the jail and set bonds.

And then after that, the magistrate judge would set the bonds and then later came the commissioners. They would set the bonds. And then anything else above that would go to the magistrate judge after that.

Q. Now, did you recall complaints that there were some judges, when they became magistrate judges, they were rarely around, you had a hard time finding them?

A. Sure, and a lot of people didn't want to be bothered at home.

Q. Now, was it fairly common, when you couldn't reach the magistrate judge, to go to the courthouse and try to find another judge to sign off

on a bond?

A. Yes, and sometimes, we didn't even call the magistrate if we knew it was someone that wouldn't help us.

Q. Now, they went to a commissioner's process later, didn't they?

A. Yes.

Q. Even after the commissioner process, did some people still go to other judges when they couldn't reach the commissioner or to get another judge to sign off on bonds?

A. Yes, even more because, if the commissioner was -- it depends who was on. We worked this 24 hours a day, 7 days a week. We kind of knew who would do what on looking at the person's record and the charges and putting the whole thing together. We could kind of guess what each person would say.

So we would want to go around -- hurry, let's get this bond set before it goes to the commissioner because it's going to be too high.

Q. So when you say we would know who would do what, were there some judges that just didn't like drug cases and some judges didn't like violent cases, is that what you're referring to?

A. And some judges that didn't want to be

bothered.

Q. Now, were you aware that some of the judges complained that other judges weren't doing enough bond work and it was falling onto their lap all the time?

A. Yes.

Q. And were you aware that there was -- a lot of times, judges would encourage other judges to try to carry more of the bond load on their own?

A. I think either. We started with that complaint too because we were -- and maybe judges that were helping us too, like Judge Porteous, for example. We're calling him, calling him, he's aggravated. Hey, everybody else, your turn to do your job and -- you know, we can't wear him out at one point.

Q. You also said you complained about it. Did sometimes bondsmen go into these judges and say, could you just talk to Judge A and ask him to do a little more bond work or -- you know, did bondsmen ever complain to judges to try to say, you really need to talk to this guy, to get him to do a little more of this?

A. Well, we kind of did that at lunch.

Q. Do you recall a bond with a guy from New

York who I believe your brother handled? It was a guy who was accused of fraud, and originally, Judge Porteous granted his bond and then called back and said, I just found out more about this guy, and I'm not going to sign the bond? Do you recall that case?

A. Not really, no.

Q. Do you have any idea, during the 1990s -- really, I guess the period we're looking between is probably 1992 to 1994, is really the key period here.

A. Okay.

Q. Do you have any recollection of how many bonds BBU would secure from judges in the 24th judicial district during every month? Do you have just a rough idea of what your traffic was like?

A. I have no idea. I really don't know.

Q. How about annually? Do you have any idea just how many bonds you would move through that district annually?

A. I don't know what the number would be in '92 and '94, but I know, around '99, it may have been 40,000 items a year, but that doesn't mean 40,000 defendants. If one person has three or four charters and the bonds are written separately, one person could have four bonds, so the amount of items, but in '92 and '94, we had -- before that, we had a

mom-and-pop shop, and during that time, we really became a booming business. We made a lot of money. We started buying property and -- you know, coming out, so to speak, here we are.

Q. So forget about the numbers. I can understand that. So during '93-'94, were you handling as many bonds as your brother, or were you doing fewer bonds than your brother?

A. About as many.

Q. And by '93-'94, were you, at that point, doing most of the direct contact with judges?

A. Yes.

Q. Did you get bonds signed by most of the judges at one time or another in that district?

A. I would think so.

Q. Did Judge Porteous ever reject the amount of bond that you were asking and make it higher or sometimes make it lower? Did he ever adjust the figure himself?

A. Sure.

Q. Why would he do that? Would he explain why he was doing that?

A. Either something would be on their record or there was an indication he wanted to go to lunch.

Q. When you say something is on their record,

did you ever say, when he was signing the bond, I looked at this guy's jacket, and I've noticed a couple of things here that bother me?

A. Sure.

Q. And your experience was he would generally get that from Rhonda who would get that from the jail?

A. Or he would call himself sometimes too like from his house or on his cell phone. Rhonda is not there to call the jail. We could only get information from the family and the Defendant, and we would kind of grill them a little bit, so when we went to Judge Porteous, we would say, this is what we know, of course, check it out.

And that's where the difference between Adam and us, and Judge Porteous bragged about that a lot because, if Adam knew something that was bad, he would still lie about it. If we knew something that was bad, we would say it.

Q. I see.

A. That was the difference.

Q. And so was it your impression he didn't trust Adam much?

A. Yes.

Q. Adam Barnett?

A. Yes.

Q. How about this guy? It's Hebert, right?

A. Hebert.

Q. With Hebert, was it your understanding that Hebert would sometimes take judges out to lunch?

A. Which Hebert, the one that my brother had worked for?

Q. Yes, the one that had the bond business before your brother. This is Adam Hebert.

A. Yes, Adam Hebert.

Q. Didn't he have the business before your brother?

A. Yes.

MR. REGAN: Rock?

THE WITNESS: Yes.

BY MR. TURLEY:

Q. His name was Rock?

A. Yes, but his name was Adam. I forgot that until you reminded me.

MR. REGAN: You're back on track.

BY MR. TURLEY:

Q. I'm better at Rock than I am Hebert.

To the best of your knowledge, did he sometimes take judges out to lunch?

A. I really don't know. I remember him -- he

had a fishing boat. I remember him taking some judges on a fishing boat.

Q. Were you aware whether he would sometimes deliver shrimp to judges, free shrimp to judges in Gretna?

A. I really don't know that firsthand. I mean, he had property, and all this property was put up like this in Lafitte, which is a fishing town, and he had a yacht and a fishing boat so I would assume shrimp came with that too, but, no, I didn't see him bring any shrimp that I remember.

Q. And how about Adam Barnett. Would he sometimes go out to lunch with judges?

A. Yes.

Q. You said pretty quickly. Was it a regular thing that he would go out to lunch with judges?

A. Yes. You're talking about during the Adam Rock Hebert time, or when he was working in our office?

Q. During the whole time when he was working with your office and with Hebert, did he regularly go out with judges for lunch?

A. I really don't know about the Hebert thing because when he worked for Rock Hebert, Adam worked in the New Orleans division, not really so much in

Gretna, and I worked in the title company. I was 16 years old at that time. I'm 47 now, so that's a long time ago.

Q. Believe me, I know. How about after you started working the bonds business. Did you see him go out to lunch a lot with judges?

A. Yes, and he worked us for that too. $500 to take Judge Porteous to lunch or to go golfing or this one or that one or take the guy in the DA's office. I need some extra money. That's where the give me more, more, more started coming in.

Q. How about other judges? Do you remember him taking other judges out to lunch?

A. If you could jog my memory, I could probably agree with some stuff, but no, not really. I just remember him --

Q. It's not really you can't remember -- did you believe that he went out to lunch with other judges or do you believe he only went out to lunch with one judge?

A. I just know about him going to lunch with Judge Porteous and some judges in New Orleans. I remember him speaking about some traffic judge or something in New Orleans. I mean, if I had a list of the judges who were on the bench at that time, I

could probably say, yes, well, maybe, yes, I heard Adam say this, but I can't remember all those names.

Q. Fair enough. Now, one follow-up question. We were talking about how sometimes when Judge Porteous was at home, he would call the jail. Do you remember mentioning that?

A. Yes.

Q. Did you sometimes go to his house or call him at his house at night about a bond?

A. Yes. I've never been to his house.

Q. But you would call him?

A. Yes.

Q. And would he tell you, I want to call the jail first, and then get back to you?

A. Sometimes, but -- you know, he had to call the jail to split the bond anyway, so then we would call the jail in a few minutes to see if the bond was split. I mean, if it wasn't split, we wouldn't call back and say why. We would kind of end it there.

Q. Why didn't you call back and try to get him to change his mind?

A. That's kind of rude, I guess.

Q. Did you think that he would not take well to that, to have you call back and try to argue with him about it?

A. Well, maybe, in person, it would have been easier to argue. It's enough to get cooperation at home or to get him on the phone.

Q. Now, we're talking again -- you said that you started -- when do you think you started having lunches with judges? Was it 1992 or 1993?

A. I think it was '92.

Q. Late 1992, mid?

A. After Judge Alan Green was elected, we started going to lunch with other judges. Judge Porteous kind of introduced us to other judges, but before that, it was Vegas.

Q. Why does Green's election stick out as a time period to you?

A. Because that kind of comes up as what I call the training period, to bring other judges in, to train them on how to split bonds, to train them on the bail bond business, to train them to trust us, to hang around us, and Judge Porteous was respected and loved by people in the courthouse, and he's hanging around us, going to lunch, going to Vegas.

It wasn't a secret either. And to get other judges at the table, then -- that's why when I called it a sales pitch earlier, I just remember Judge Porteous always saying the same thing. I would

rather have a commercial bond. I mean, that was just kind of like repeated over and over and over and over.

Q. He would rather have --

A. A commercial bond.

Q. As opposed to what?

A. As opposed to overcrowding or a free bond or signature bond.

Q. So you would often hear him at lunch saying he would prefer a commercial bond than or mandatory release or free bond, is that it?

A. Yes.

Q. Was there anyone who disagreed with him on that? Was there like debates about that or did people pretty much agree with that?

A. People pretty much agreed except --

MR. REGAN: Sassone?

THE WITNESS: Yes.

BY MR. TURLEY:

Q. Judge Sassone had an issue?

A. Sassone and Vernon Wilty. He was a pretrial officer, and they believed in letting the people out free.

Q. Now, when you talk about the training period, did some of these judges, when they came to

the bench, have very little experience on bonds?

A. Yes.

Q. And so is that what you meant by training period, where you had to try to show them how the system worked? I mean, was that part of the training?

A. Sure. Most lawyers, I mean, that aren't in the criminal court, they don't even know how bonds work, so it's not just the judge. I mean, a lot of people don't know how bonds work. It's something, if you don't do it every day, you really don't understand, but it's insurance.

I bet if you polled people outside and asked them if a bail bond is an insurance policy, people wouldn't know the answer.

Q. So you mentioned when Judge Green was elected -- I'm not so sure when that is, but you said it might have been '92. Do you recall going to lunch with Judge Porteous in '92 or with Judge Porteous in '93?

A. No, I remember going to lunch with Judge Porteous in '92.

Q. And these lunches with Judge Porteous, I mean, I'm talking between '92 and '94, this period.

A. Okay.

Q. Would you often go to lunch with your brother Louis and Judge Porteous?

A. And Rhonda and several other people too.

Q. So these were largely large lunches?

A. Yes.

Q. How did you get such a large group? Did people just tag along or how did people join the lunch group?

A. Judge Porteous liked to have people around them. He's kind of an entertainer. He's a jolly person. He needs an audience.

Q. So was it your impression that, when he was going to lunch, he would just say, why don't you come on the to lunch? Is that the type of thing? Or would he call people?

A. He would invite people in his staff. We would call, or they would call, let's go to lunch, let's go to lunch, let's get some bonds done, go in his office. Let's go to lunch. Okay. Where do you want to go? We'll meet you in this restaurant. And other people would come.

Or if it was something more planned, like trying to get other judges. Someone new gets elected on the bench, go to Judge Porteous, let's get this judge at lunch, so the more he could help us get

people at the table, the less we could bother him too.

Q. Was it sometimes easier to find judges at lunch than during office hours?

A. No, I really didn't get bonds done at lunch, but right before lunch or right after.

Q. I'm sorry. I keep on interrupting.

A. That's all right. I thought I would be doing that.

Q. It's called being the youngest in a large family, trying to get a word in edge-wise. I interrupted you.

Did you have something else to add to that?

A. Trying to get people at the table. As soon as a judge gets elected, let's try to get him at the table. Let's try to train him. And that was an opportunity for Judge Porteous to have an entourage with him too. Let's invite two or three judges and their staff and the table would be big like this. Thousands of dollars later, hours later, fun.

It was fun. It really was fun.

Q. And you said that you wouldn't necessarily talk business. Would you just basically -- these were sort of social conversations like --

A. The same thing came up all the time, commercial bond, and then the strippers in Las Vegas, that story. Just the same -- Adam Barnett climbed to the top of a tree to tell a lie and stand on the ground to tell the truth. That was one of Porteous' favorites, just rehashing the same old, and it was funny. The way he told it was funny.

Q. So he would often trash Adam Barnett in front of the other judges?

A. Yes, and that was a way kind of to get the other people to -- look, don't trust this guy because he's like this, but trust these people because we're at lunch together kind of thing.

Q. Did you just have lunches where you primarily -- was it usually talking about bonds, or did it also talk about politics or sports?

A. All of that. Just trash talk, small talk, and funny. We would talk about ourselves too, you know, laugh at ourselves.

Q. And did a lot of the judges drink? I mean, did people drink for a while at these things?

A. Yes.

Q. Did judges, other than Judge Porteous, drink at these occasions?

A. Yes.

Q. Would you often raise bond cases at lunch, or would you primarily just be sort of socializing?

A. Repeat it again.

Q. At these lunches, would you actually raise individual bond cases at these lunches, or would you primarily socialize?

A. Socialize, but unless it was a really big bond, we didn't bring -- we had no work sheet that we made. We wouldn't bring the work sheet to the table. We thought that was rude. But if it was something really big, then -- and I don't recall one particular one that -- you know, we did at lunch, but something would be said like, after lunch, I want to go see you in your office. Okay. Sure. Or right before lunch, let's do the bond, let's go get lunch. Okay.

And it depends -- you know, if he had people already taking him to lunch. Sometimes, we were fighting over, no, it's our turn. We wanted to get him at lunch, but other people were taking him to lunch too.

Q. And do you remember what other judges were at some of these lunches? You said these were large engagements. Do you remember any of the names of the other judges?

A. I remember the Alan Green one

specifically.

Q. How about Judge McCave?

A. Yes, Judge McCave. I think he was at that one too. Judge Chechardy. I remember that one specifically because that was the initial -- that sticks out because kind of like the training session, that one, a couple of new elected judges at the same time, and it was maybe 15 people.

Q. Judge Gucobbie?

A. Yes.

Q. Judge Cascio?

A. Yes.

Q. Judge Grant?

A. No, never been to lunch with Judge Grant.

Q. Judge Fitchue?

A. Yes.

Q. Judge Wanehurst?

A. Yes.

MR. REGAN: Wanehurst?

CONGRESSMAN JOHNSON: I would interpose an objection at this point. I know that counsel can communicate and coordinate with his client, Ms. Marcotte, but to actually testify himself through her, I think, is inappropriate, and I've seen it happen more than --

MR. REGAN: I apologize. The name was pronounced Windhorst, not Wanehurst. I was just trying to correct the pronunciation.

THE WITNESS: I thought you interrupted me because you might have had a conflict with him.

MR. REGAN: No, it was Windhorst.

BY MR. TURLEY:

Q. Judge Dotson?

A. Yes. I haven't been to lunch with Windhorst as a judge, but when he was a state senator or rep, whatever it was, I had lunch with him, but not as a judge that I can recall.

Q. Was there any particular restaurant where most of these lunches occurred at?

A. The Beef Connection, Ruth's Chris Steak.

Q. And I was just at the Beef Connection about two days ago. Was there a time when the Beef Connection was the only -- sort of main restaurant people went to? I mean, was there a period where that was sort of the go-to restaurant for lawyers and judges?

A. The Red Maple was always that also. They had lingerie shows at the Red Maple. The Red Maple has been there maybe 100 years in Gretna, and Old Gretna, close to the Gretna Courthouse, of course,

has been around, but the Beef Connection has a great lobster, really does, really thick lobster.

But, yes, on the West Bank, to this day, I really don't know any really good steak houses. I mean, there is a new one, but there is still the Red Maple and the Beef Connection still there.

Q. Let me ask you: Extending these lunches past '94, when the judge entered the federal bench, did you have many lunches with the judge after he became a federal judge?

A. No.

Q. Did you have any lunches with him after he became a federal judge?

A. I don't remember. If so, maybe one or two, but I don't really recall. I don't remember any right now. I know my brother did with another executive at that point. We had really gotten busy, and I wasn't taking long, long lunches.

Q. Do you recall your brother going to New York and coming back with some fake Rolexes, watches?

A. Yes.

Q. Were you in New York with him when he did that?

A. Yes.

Q. And you all went to Chinatown, I think, to

get those things?

A. Yes.

Q. Did you specifically go to Chinatown to buy the fake Rolexes?

A. I don't know how we got to Chinatown.

Q. But were you guys looking for fake Rolexes? Was that one of the items on your trip?

A. I don't know. We had never gone to New York. We went there to see an insurance company, to get another contract, and that guy sent us to some shows. You know, we had had never been to New York. We were small town Gretna people from Fourth Street.

I don't know how the Rolexes came about or how we ended up in Chinatown, but, yes, when we went back another time, we made it a trip to go back to Chinatown, but the first time, I don't remember how we ended up there.

Q. You said something interesting. You said you're small town people from Gretna Fourth Street. Would you consider Gretna and this judicial district a relatively small town community?

A. Well, the judicial district is the parish, but the city of Gretna itself is a small town. It has a little police department, and it's got a city hall, and you go there, and they're writing receipts,

and they're stamping with a stamp -- you know, paid, the big round -- you know, they're still doing that now.

You feel like you're walking in your house at city hall. So, yes, it's still a small town, Gretna, so the courthouse is located in the municipality of Gretna.

Q. And is the legal community relatively small and close-knit in Gretna?

A. The city?

Q. Yes.

A. Yes.

Q. The ones practicing in the court that Judge Porteous was a judge in?

A. No, that was the parish, not the city.

Q. But was it a small community around that parish court, where the judges and lawyers knew each other?

A. And everyone in the courthouse too. Everyone knew everyone's business.

Q. And did they tend to socialize with each other and go out to lunch with each other?

A. Yes. In fact, after things went down with our business, I used to have a Christmas party. I might have 150 people come to my party, and after the

FBI came, it was like 10 people because everyone I knew was at the courthouse.

Q. That's interesting.

A. Like I didn't -- the money went, the friends, the courthouse, yes. So does that answer your question?

Q. Yes. So going back to the watches, do you recall your brother coming back with a whole bunch of watches to Gretna?

A. Yes.

Q. And was it your recollection that he went to judges and just offered people these watches to various judges?

A. Clerks, people at the jail, yes.

Q. Did a lot of judges accept them?

A. I don't really know which judge he offered them to. I don't know who accepted them.

Q. Did people kid him a lot after that about the watches, I mean, at lunch and stuff?

A. It sounds familiar.

Q. Now, did you all bring other types of things to the judge's chambers, like turkeys and hams, on occasion?

A. Yes, and cakes. My brother was married to a woman that her sister owned a bakery and worked

there, so cakes.

Q. Like gingerbread cakes on occasion?

A. Birthday cakes. They could really draw on the birthday cake, like a kid's cake, like a theme. They could really create some beautiful cakes.

Q. So this would be like, if a judge had a birthday, that y'all would make a cake for him and bring it there?

A. Not us, the bakery, and also petit fours. Do you know what a petit four is?

Q. Yes.

A. They made delicious petit fours.

Q. Did you do that for most of the judges? You tried either cakes or hams or turkeys?

A. Yes.

Q. Did any of them refuse them?

A. Yes.

Q. Did most of them take it, or did most of them refuse it?

A. For the most part, people took cakes.

Q. When would you bring the hams and turkeys?

A. Thanksgiving, Christmas, maybe Easter sometime, I don't remember, holidays.

Q. Did you ever bring shrimp?

A. To the courthouse? No.

Q. Now, in terms of other things that --

MR. REGAN: Excuse me. May I speak with my client?

MR. TURLEY: Yes.

(Witness confers with counsel.)

THE WITNESS: To clear up about the shrimp, I thought you were asking me did I bring shrimp to the courthouse.

BY MR. TURLEY:

Q. Yes.

A. And I said, no, we never brought shrimp to the courthouse. We brought shrimp to people's houses.

Q. Oh.

A. And we brought shrimp to our office that people picked up, but to bring smelly shrimp inside the courthouse, no.

Q. So would you regularly bring things like shrimp to judges' houses?

A. About the same, at Christmas and Thanksgiving, or if -- you know, later on, we had agents all over the place. In some fishing towns, these people would bring us shrimp, and we're like, we don't want these shrimp, we don't have time to cook them, and we would give them away.

Q. Do you remember which judges you brought shrimp to their houses?

A. Yes.

Q. Can you tell me who they are?

A. Judge Greffer.

Q. Judge Greffer?

A. Yes. And I can't remember if we took shrimp to Judge Green's house or not. I don't know. That's all I really remember.

Q. Was this a pretty informal thing, that is, you sort of did the rounds, whoever wanted them would take them, or if they didn't, they wouldn't? Was it very formal, or would you send them specifically it to people's houses?

A. Whenever we got them, if somebody went shrimping and dropped off a thing of shrimp, it was more like to get rid of them, and at one point, we started buying them.

Q. We're going to talk about what you did with Judge Porteous in a second. But did you all ever do anything for judges, like repairs or helping them out or driving them anywhere? I mean, was that something that you all did as well, that is, little favors for judges?

A. Repeat the question.

Q. Besides the food, the Rolexes, stuff like that, would you sometimes do little favors for judges, beyond just the food?

A. I'm not sure what you mean by little favors.

Q. Would you do anything for judges to help them out? I mean, would you buy them tickets or take them on fishing boats? I mean, I'll trying to get an idea --

A. Yes.

Q. Can you give me an idea of the types of things you guys would do with other judges?

A. When ex-Judge Bodenheimer was a judge, we did some repairs on his house when his wife was having a baby and hired his children, paid their insurance. He tried to go in business with us a little bit at one point with some home incarceration program. I was really totally against that.

So I wouldn't say that that's a regular thing. Judge Green, I did repairs at his house. His son's graduation, I think that was, and the Destin trip, we went to the judges' convention there and took some judges on a yacht ride.

Q. Did you all charter that yacht?

A. Yes.

Q. And that's you and your brother chartered it?

A. I chartered it. My brother was out of town or somewhere else at the time. He was in London at the time.

Q. Do you remember how expensive that was?

A. Not really.

SENATOR UDALL: Counsel, we've had a request for a break. We've been going about an hour and a half now. Do you want to --

MR. TURLEY: We can stop here, but can we stop the time?

SENATOR UDALL: Are we all in agreement for maybe a 10-minute break at this point?

MR. TURLEY: Sure.

(Recess.)

BY MR. TURLEY:

Q. I was hoping you might be able to help me a little bit. I though we're having trouble with the number of bonds you all would move, and believe me, I can understand that. I was going to push you a little further, to try to see if you could give me just an estimate on like how many bonds in an average day, from the '92 to '94 period, you all would generally move in this district.

I mean, could you give me a rough idea? I mean, would it be like more than a dozen or less than a dozen, two dozen, three dozen?

A. I don't know. It's more than a dozen, less than two. Again, I'm just guessing because, before that, we were just a little mom-and-pop shop, writing a few things here and there, and then after that time, it seemed like hundreds, but compared to what was going on in '99, thousands and tens of thousands.

So what seemed like a lot in '93 was a lot back then and probably more profitable for us than what we were doing in '99, just trying to gobble up the market share.

Q. That's fair. Can I ask you about Michael Porteous? Are you familiar with Judge Porteous' son?

A. Yes.

Q. Would he have occasion to use a parking space in your parking lot during this period of '92 to '94?

A. Yes, we issued him a parking spot.

Q. Now, is it true that he actually would pay for that spot, that he would pay $5 a day when he pulled in?

A. I don't recall him paying for that spot.

Q. Really? So would you be surprised if he testified that he would pay $5 a day? Did other people pay $5 a day?

A. Some people did, the public, and maybe $5 -- this was way after. Someone was running a parking lot, and I'm talking about like really late '90s at this point, where someone -- we kind of leased it to someone, but not really for rent -- you know, here, you want to make some money, work at the parking lot. It kind of came like that.

And later on, we started making money on the parking lot, so if you tell me in the late '90s, I wouldn't be surprised because that guy didn't let anybody go without paying, but if you're talking about the mid/early '90s, I would be really surprised if he said he paid to park.

Q. Did anybody pay to park in that lot in the mid-'90s?

A. No.

Q. Would it surprise you to hear that, sometimes, he would pull up, and there would be in space in the parking lot?

A. Yes.

Q. So that would surprise you?

A. No, it would not surprise me.

Q. So when we say he had a reserved spot, other people could park in that spot, correct?

A. It was so difficult to keep the people out of everyone's spot. You would have to stand out there and monitor it. People, strangers, passers-by would have to park. You would have to put a guard around, a gate and a key, if you wanted to keep people out of it.

Q. That's what I was going to ask. There was no gate or anything. It was just an open lot; is that correct?

A. You could drive through the two buildings, but that came later also. I think you could get to it from the back way, back when. Yes, it was an open lot in the back. So many things happened through the years, how that area evolved into a big complex now.

So when I was talking about Gretna being small, a little small town, I see pictures, and Huey P. Long Avenue was a dirt road, and the parking lot in the back of the Blue House was a dirt radio too at one point -- you know, like they have the pictures in the city hall. I'm sure there are pictures somewhere in that parking lot before it was a real parking lot.

Q. Are you living in Gretna now?

A. Yes, I'm a Gretnite.

Q. A Gretnite is what it's called?

A. Uh-huh.

Q. I'm going to cut back on a couple of questions that I wanted to fill in some gaps. Forgive me if a bounce a little bit here.

A. Okay.

Q. You said that the judge would sometimes call the jail about bonds before he signed it. Would he sometimes call the district attorney himself, do you know?

A. I don't recall.

Q. How about the detectives in the case? Would he sometimes call the arresting officers?

A. Yes.

Q. And why would he call the arresting officers in these bond cases?

A. Judge Porteous wanted to do the bonds for us, and looking for something to hang his hat on is kind of how he put it.

Q. Would he sometimes find out stuff that was bad about a bond from the arresting officer and decide not to grant it?

A. Yes.

Q. Do you know, would he often ask if there was a gun or drugs involved with the arresting

officers?

A. That sounds familiar, sometimes. We would call the jail, and we had our connections inside the jail, and they would read the gist to us, and then if something was -- the police -- we got to be great detectives too, you know, knowing how police reports should be read. We could have been district attorneys too at one point, but knowing that it's a weak case by what's written in the gist on the report, and then we would bring that information to Judge Porteous sometimes.

And then he could call the officers, and if it would check out what we said, then he could do the bond, so he would try to find a way to do the bond instead of just -- some people might not take that extra step.

Q. There are some judges who would just grant or deny and not make the phone call, if that's what you mean?

A. Yes. Or if someone at the jail read the report. A lot of things like that stem from victim cases -- you know, the wife said that he's trying to kill me and the person is charged with attempted murder and the wife is in her office trying to get him out, she's not hurt -- you know, the report says

something bad.

And then the detectives interview the wife and then they find out -- you know, kind of like -- but most judges don't dig into the case like that, unless it's someone who wants to help somebody, like how many people are going to go through all of that trouble for us to make money.

Q. But did you also conclude that the judge also wanted to make sure there was nothing bad in the bond for his own purposes?

A. Yes, that too. If the policeman said -- you know, he really held a gun in the person's mouth, I think he would say no.

Q. One would hope.

(Lori Marcotte Exhibit No. 3 was marked for identification.)

BY MR. TURLEY:

Q. I'm handing you an exhibit with a cover page with the number 1 at the top and the Federal Bureau of Investigation and at the bottom, there is what's sometimes called the Bates stamp of JC202785. Do you see that?

A. Yes.

Q. I'm going to just actually ask you about one small part of this. On page 3, if you turn to

the third page, I'm just going to ask you about one sentence, is all I'm interested in.

A. Okay.

Q. If you look on page 3, you see the page number is over here, and this is in the paragraph beginning, "Porteous was the judge Lori and Louis went to."

A. Yes.

Q. At the very end of that, you said, "Porteous also called the district attorney's office and the detective to get information on the Defendant." Do you see that?

A. Yes.

Q. Do you recall saying that in an interview with the FBI?

A. Not really.

Q. Is there any reason to believe that that's an inaccurate statement? Do you think that's still a true statement?

A. If I think about it, maybe I could come up -- now that I'm reading this, it's making me remember. I don't remember if Bodenheimer was in the DA's office when Porteous was a judge, and he may have called him. It's possible.

Q. It's a long time ago. I understand. Let

me ask you about some other things. Are you familiar with repairs done on Judge Porteous' fence?

A. Not too much, but --

Q. Maybe vaguely?

A. Yes. I didn't see the repairs.

Q. But are you aware that an Aubrey Wallace and Jeff Duhon allegedly repaired his fence?

A. Yes.

Q. Do you recall signing receipts of reimbursement to them for those repairs?

A. That's very vague.

Q. Vague in your memory, you mean?

A. Yes. It seems like it because they never had any money, so either we gave them money or a credit card or something.

Q. But they would come to you, right? Weren't you the sort of accounting person of the two of you?

A. Yes.

Q. Do you think you would have kept a record of that?

A. Well, let me back up. My mother held the money. My mother held the money in a little bag, and at night, my dad would stick it in his pocket so -- you know, like he wanted to pretend like it was

his business, the father, give me the money, kind of like that.

And then later on, we had a safe, but to get money -- I don't know how the money came up about Porteous' fence or the receipts.

Q. Do you think it might have been in cash that you -- did you often just reimburse them in cash or give them cash to buy things like this?

A. In the real early '90s, yes.

Q. You don't have any recollection how long it took them to repair this fence, do you?

A. I think they built a fence, is what my understanding was, because I remember somebody saying something about so much money per board for the fence. That's how come -- that's why it makes me think it's not a repair, it's building a fence.

Q. Did you ever produce receipts for the FBI or anyone else on this fence issue?

A. No, not that I remember.

Q. Did Judge Porteous ever ask you to repair or build a fence?

A. Me, myself?

Q. Right.

A. No.

Q. Did he ever ask you, yourself, to repair

his car?

A. No.

Q. Did you ever arrange for his car to be repaired?

A. Yes.

Q. And could you tell me how many times that was?

A. I can't remember, five or six. I'm just guessing. His car was broken a lot. His son's car too.

Q. What would you do when you arranged it? I mean, would you ask someone to do it for you or how would you go about repairing his car?

A. Either Jeff Duhon or Aubrey Wallace would drive it to this place, a guy that Adam had introduced us to.

Q. Would, sometimes, Judge Porteous pay for those repairs?

A. Not that I recall.

Q. Would you have known if he did?

A. His car was broken a lot, and I'm telling you maybe five or six, that I know of. His car was broken more than that, so which five or six, you know.

Q. Once you sent someone to repair the car,

would you have known whether he paid for all five or six or whether he might have paid for two out of the five?

A. No. If we sent the car to be repaired, generally we paid for it.

Q. How would you pay for it? Would you pay for it by check or by cash?

A. I don't remember if we even had a credit card back then. Cash. Cash, probably. Just knowing the guy that owned that repair shop makes me -- cash.

Q. Part of the record talks about a noncompete agreement that ended up being allegedly raised with Judge Porteous. Do you remember a controversy over a noncompete litigation?

A. Which one? There were three, I think.

Q. This was around 2001-2002 and it originally went in front of Judge -- is it Guidry?

A. Guidry.

Q. Does that help refresh your memory?

A. Yes. That's when Judge Porteous was a federal judge.

Q. Now, did you ever see Judge Porteous contact Judge Guidry about that case?

A. No.

Q. Did Louis tell you that Judge Porteous

would contact Judge Guidry in the case?

A. I went with Louis to Judge Porteous' office, and we asked him to contact Judge Guidry about the case, and he said he would, and then later on, something was faxed, and the FBI ended up with that fax confirmation some kind of way, that it was confirmed that somebody faxed something, either from his office or to our office.

Q. From his office, you mean Judge Porteous' office to your office?

A. Yes, or from Judge Porteous -- again, I don't know. I didn't see it, but either from Judge Porteous' office to Judge Guidry's office or from our office to Judge Porteous' office.

Q. Were you present during this conversation, or was it just Louis and the judge that had this conversation about Guidry?

A. No, I was present with Louis.

Q. Now, do you recall what Judge Guidry, ultimately, did in the case? I mean, isn't it correct that Judge Guidry ruled against you in the case?

A. I don't know what happened. I thought --

MR. REGAN: Let me interject and object. I thought there was more than one case here. Is

there a particular one you're talking about?

MR. TURLEY: Yes, we're talking about Bail Bonds Unlimited versus Chedville.

MR. REGAN: Chedville. Okay. I believe there was more than one case involving employment contracts.

MR. TURLEY: We're talking about the Chedville case.

MR. REGAN: Are you familiar with that?

BY MR. TURLEY:

Q. Before Judge Guidry.

A. I was answering questions about another one.

MR. REGAN: A different one.

THE WITNESS: I really was.

MR. REGAN: I'm just trying to clarify.

BY MR. TURLEY:

Q. No, this is really very helpful. Let me step back, so we'll make sure we get everything down, including whether the fax was in this case or another case. I'm talking about the Chedville case, the Bail Bonds Unlimited versus Chedville, in front of Guidry, and my understanding is that Guidry ultimately ruled against you in that case. Do you recall that ruling?

A. Yes.

Q. Now, was the fax in that case or a different case?

A. It was that case.

Q. Oh, it was that case?

A. It was that case. I had that confused with some other interview. I knew it was Guidry.

Q. Now, do you recall --

A. I was confusing them with the Dennis case with Chedville, worked for Matt Dennis. It was a family thing, and they were all kind of interrelated. I think more than one of them sued us then.

Q. Do you recall that BBU appealed Judge Guidry's decision to Judge McManius?

A. No.

Q. Do you recall that Judge McManius ultimately ruled against you as well?

A. Yes. I think it was just appeal to the Fifth Circuit, and that judge decided it with other judges. I don't think it went straight to him. Yes, I know, because we lost, and that was pretty much the end after that.

Q. Now, when Judge Porteous had been confirmed, but before he became a federal judge, do you recall, for example, on the last day, whether you all moved any bonds with Judge Porteous on the last

day?

A. Yes. I don't know if it was the last day or the last two days. I mean, I don't know. I remember, after he was confirmed, he did a lot of bonds for us.

Q. We have been given bonds by the House of Representatives, and we may not need this exhibit. I'll just ask.

Would it surprise you that we have only one bond that was signed on his last day in office? Would that surprise you?

A. No, if it was his last day. Was it a big one?

Q. We could take a look.

A. Again, I think after he was confirmed --

Q. Would it surprise you that we have only two or three bonds in the week before he left office that were signed by him?

A. Yes and no.

Q. Yes and no, in what sense?

A. Because Judge Porteous, before he left, he wanted to help us, so he did bonds for us. If there were a few bonds, maybe they were bonds we couldn't get done somewhere else. That's why I'm asking you are they big, are they hard. I can tell you what the

charges are.

Q. I can tell you what the bond is. Maybe it will refresh your recollection.

A. Okay.

Q. I left my glasses home so forgive me for putting this on the other side of the room. This is for Craig Massey, and it's for $5,000. That was the bond from his last day. Do you recall that?

A. Huh-uh.

Q. Would it surprise you that, for the month before he left office, he only signed less than 30 -- roughly 30 bonds for that entire month, before he left office? Would that surprise you?

MR. REGAN: Excuse me. Objection. Clarification. What part of the month? Are you talking a 30-day month or his last two weeks in office?

MR. TURLEY: All of October. That's a very important distinction.

BY MR. TURLEY:

Q. Would it surprise you if, in October, he only signed 30 bonds before he left?

A. That wouldn't surprise me.

Q. Does that help you recollect whether that was sort of the general traffic of bonds in a given

month? Does that help refresh your, memory in terms of, roughly, the number of bonds you would move through the judge?

A. Well, 30 bonds in a 20-day workweek is more than one a day, and sometimes, we would get 10 done at once versus one every day, so it's kind of hard to say, and I'm sure that last month, he must have been busy doing things. To catch him --

Q. So he might not have done many because he was doing other things, is that what you mean, that month?

A. Yes.

Q. We've talked about the other lunches and judges and gifts. Have you ever given cash to a judge?

A. Yes.

Q. Can you tell me when you've given cash to judges?

A. What year you're asking me?

Q. Well, after you started the bond business in like '92-'93, did you often give cash to judges?

A. Myself, personally?

Q. Yes.

A. I think three times.

Q. Can you tell me those three times who the

judges were?

A. Can I speak to my lawyer a second?

Q. Oh, absolutely. Do you want to step outside? Senator, should we stop the time, and we'll let them speak?

(Witness confers with counsel.)

THE WITNESS: Thank you.

BY MR. TURLEY:

Q. No problem at all.

MR. DUBESTER: Could I bother you for the exhibit with the bail bonds that you've been alluding to, but haven't marked as an exhibit yet?

MR. TURLEY: Sure. It wasn't introduced, but sure. Would you like us to introduce it?

MR. DUBESTER: I'm not asking for that. I would just like to look at it for a second. Thank you.

MR. TURLEY: No problem at all. Senator, would you like a copy of the bonds thing?

SENATOR UDALL: No, that's fine.

MR. TURLEY: Or anyone else, for that matter?

BY MR. TURLEY:

Q. I had asked about the three times with the judges. Could you describe them for us?

A. I gave Judge Gucobbie cash at a fundraiser he had in a park in Kenner, and this must have been, I want to say '94. I'm not really sure about the date exactly, somewhere in that area, and it may have been after too. I gave him cash twice.

Q. You gave Gucobbie cash twice?

A. Yes. And I gave Judge Green cash before he was a judge. I gave Judge Windhorst cash before he was a judge, but he was a senator at that time. And Judge Cascio. I didn't give the cash to him. I gave it to someone in his office.

Q. Do you remember how much money you gave to Judge Cascio?

A. $10,000.

Q. Was it in an envelope?

A. Yes.

Q. Do you remember the year of that?

A. '97. I'm just guessing on the year too.

Q. And what was that money for? Was it just giving him the cash for himself?

A. Well, I gave it to someone that worked for him, for him, not to him directly himself.

Q. And was that for just his personal use?

A. Well, he had a fundraiser at that time. We got tickets, but really, it was really a campaign

contribution that was -- it was for help on bonds.

Q. It was payment for his help on bonds?

A. Yes.

Q. Did he know the money was coming?

A. Yes.

Q. Did he ask you for the money?

A. No.

Q. How did he know it was coming?

A. We told him.

Q. And when you say, "we," was that your brother and you?

A. Yes. When his fundraiser would come up, he would give us a stack of tickets, sell them -- you know, sell the tickets, but we never did sell the tickets, and then we would say that we're going to have your money soon, we're going to have your money soon, and give it to this other guy.

Q. Were the tickets worth 10,000, or was the 10,000 more than the value of the tickets?

A. I think we would take 5,000 at a time, and the 10,000, it may have been two payments, two payments of 5.

Q. Do you recall if you gave those tickets to --

A. It was two payments of 5, I think.

Q. Do you recall if you gave those tickets to other people to go -- is this for a dinner or something?

A. For a party, yes. We gave the tickets out. The whole courthouse had tickets.

Q. Who would you give those tickets to?

A. To clerks, clerks that worked in the office that couldn't afford to buy a ticket or people at the jail.

Q. How about judges?

A. Yes. They would normally get to go free anyway, but, yes. It's nice if they had some tickets to give to some people they knew too.

Q. How about senator -- is it Winhorn?

A. Windhorst.

Q. I'm so sorry. How much money did you give him when he was a senator?

A. He was a state rep, I think. His father was a senator at one point. $2,500 at his office.

Q. And why did you give that to him?

A. I think he was running for judge, but we also gave him money to change some law, bail law, also. We paid him to change some bail law, like to charge fees and stuff, and he sponsored a bill as an attorney, and he was a state rep at the time.

MR. REGAN: I'm going to object. I don't know what the relevancy is because this isn't dealing with Judge Porteous in any way.

MR. TURLEY: It actually is because what we're looking at is the context of how things were done in Gretna, the types of contributions that were made, and we're trying to create a context that, eventually, we're going to be asking about in front of the Senate, which is the reason we're asking.

SENATOR UDALL: Overruled. Please proceed.

BY MR. TURLEY:

Q. How about Judge Gucobbie? You said two payments to Judge Gucobbie?

A. Yes, two different times, 2,500 each.

Q. And do you know if he put that into his campaign or whether he pocketed it?

A. I don't know.

Q. Do you know, by the way, if Judge Cascio put it in his campaign or pocketed that money?

A. I don't know. It didn't show up on campaign reports that I saw.

Q. Oh, did you go and look to see if it showed up?

A. Well, I looked at a lot of stuff with the

FBI over time. I didn't see any then.

Q. Does that surprise you? I mean, when you give cash to these judges, did you always assume it was going into the campaign?

A. No.

Q. So you had a suspicion that some of them might be pocketing it personally?

A. Yes, and I agree with you on the relevance, but we never would have been in the position to be friendly with someone like that, to go hand them cash, had we not sat at the table and Gucobbie had gone to Vegas. I mean, I wouldn't just go hand a judge cash. The relationship was facilitated, and that's how it became open like that.

Q. Are you familiar with two expungement cases involving former employees, Jeff Duhon and Mr. Wallace?

A. Yes.

Q. Let me focus on Wallace first. Did you all help arrange to get Wallace's attorney, Robert Rees, for him?

A. Yes.

Q. Did you talk with Robert Rees about the case when he had brought it? I mean, did you have any discussions with him?

A. I don't recall. Robert Rees was around our office a lot. One of these other lawyers that we would get to get bonds split for us, so even in the end when we had wore everybody out, pay a lawyer to go get the bonds split, so Robert Rees was doing a bunch of work for us.

Q. Do you recall whether Robert Rees described this as a routine type of case or was it described as a more difficult type of case for Mr. Wallace?

A. I don't recall. I do recall about -- remember, I told you when we were at lunch with Porteous -- you know, all the jokes that come up, now, give up a commercial bond. One of the things that we really laughed at a lot was how we met Aubrey Wallace.

Aubrey Wallace was burglarizing our office, trying to steal our copy machine, and my father pulled him out of the window. That's how we met Aubrey Wallace. And my brother hired him and gave him a job as a janitor, so a lot of times, we were laughing about how my father pulled Aubrey Wallace out of a window.

So for the record, both of those people are not my favorite people, Aubrey Wallace or Jeff

Duhon, and I was against expunging both of their records.

Q. Tell me, why didn't you like Jeff Duhon?

A. He was an opportunist. He was married to my sister.

Q. When you say, "opportunist," what do you mean?

A. He didn't work. He lived at my sister's house.

Q. Did you help arrange his counsel, as well, for the expungement or your brother?

A. I don't recall. I went to speak with Louis, to Judge Porteous, about both of those cases, but after that, I didn't follow up on it. My brother was the hound, keep going, let's get it done, let's get it done, let's get it done, because my brother just wanted to -- you know, my brother-in-law, Jeff Duhon, was a very aggravating person.

You could stick him at the jail. If he had a bail bond license, you could stick him at the jail, and he would talk -- he was obnoxious and everybody would notice him. He would bring the business in. That's the things I didn't like about him.

Q. And I can certainly see that. Did you

help pay for his lawyer?

A. I don't know did we pay for a lawyer. We were giving criminal cases out to lawyers. It could have been a favor.

Q. When Judge Porteous was discussing the Duhon case, were you present for any of those discussions?

A. Not in detail. Just asking, it's my brother-in-law, let's get it done, and I would like to get him licensed, we're shorthanded. We would like to stick this obnoxious person at the jail, would help us make business, and I think Judge Porteous said, get a lawyer to file a motion.

Q. And were you present in any conversation with Judge Richards and Judge Porteous together, or were you personally aware of any conversations between Porteous and Judge Richards on the case?

A. That was on a noncompete case also, where a guy that worked for us -- and his son worked for us also. We had noncompete agreements, and the case was drawn to Richards, and we asked Judge Porteous to call Judge Richards and ask him to rule in our favor.

Q. Thank you for that. On the bond issues, did you ever give any of these judges a percentage of the bonds that they signed? Was there ever an

agreement of when any of these judges gave you a bond, that they would get a percentage back on the bonds?

A. No.

Q. And did Judge Porteous ever ask you for such a thing?

A. No.

Q. Now, were you ever interviewed before Judge Porteous' confirmation for the federal bench? Were you ever interviewed before then?

A. No.

Q. Did you ever arrange a lunch between Judge Porteous and Senator John Breaux?

A. I was involved in that lunch. It was at Ruth's Chris, and we all went to lunch there and drank for hours, and I don't know if I was drinking a lot that day or whatever, but I left that luncheon at the end, and two of the girls that works for us stayed there, and they ended up going to a casino, riding in a limousine with John Breaux and Judge Porteous.

Q. Did your company pay for the limousine?

A. I'm not sure. I mean, they all had credit cards with Bail Bonds Unlimited on it, both girls did.

Q. Do you remember the names of the girls?

A. Melinda Kring and -- it was Rhonda was the other one. It was Rhonda. Rhonda Danos. I was confused about thinking it was Bridget Sadler, but she was after Melinda, so, yes, it was Rhonda.

Q. Would it surprise you if Ms. Kring said that she arranged for the limousine?

MR. REGAN: Would you clarify that, that Melinda arranged?

MR. DUBESTER: I would just object to see if there is a good-faith basis to what Mr. -- for what Mr. Turley is using to quote Ms. Kring.

BY MR. TURLEY:

Q. She just said Kring's name. Wasn't that one of the names you just used?

A. Yes.

MR. REGAN: And then my question was, you said she -- would you re-ask the question?

BY MR. TURLEY:

Q. Yes.

Would it surprise you if Ms. Kring would have hired a limousine on such an occasion?

A. If she did, she did it with our credit card because she didn't have any money, except what she spent on us, and we weren't allowing her to spend

whatever.

Q. I'm going to direct your attention back to what I believe is Exhibit Number 3 in front of you, and this is on page 3. Now, as you recall, we talked about this earlier, a statement that you had given to the FBI?

A. Uh-huh.

Q. And you see the date on the first page is 4/02/2004. Do you recollect that interview on 4/02/2004?

A. I have many interviews with the FBI, so, I mean, I don't know which one this is.

Q. If you take a look down towards the end of the page, there is a paragraph that says, "On one occasion, at a fundraiser possibly for Breaux, Porteous and Breaux were in attendance." Do you see that?

A. Which page are you on?

Q. I'm on page 3. If you look right up here in the corner right there for the 3.

A. Yes. I'm thinking about the date. I was trying to like put it in perspective, like trying to remember more about this date, and that's actually the month after I got married, so that's when -- in the beginning of my case, but we had many, many

interviews with the FBI, and this still is a long time ago too.

And a lot of things, I don't remember, like when you showed me, I remembered. So what do you want me to look at?

Q. Well, if you look at like the paragraph -- one paragraph up from the bottom, it says, "On one occasion, at a fundraiser, possibly for Breaux," do you see that?

A. Uh-huh.

Q. And at the end, it cites you as saying, "Kring arranged for limousine service, and Lori and Louis paid for it." Does that refresh your memory at all?

A. It's the same time that I'm referring to about the luncheon that we had at Ruth's Chris. I didn't remember that it was a fundraiser. Maybe it was. Maybe it was for Breaux. But it started out as a lunch, a bail lunch, and it went into the night.

And it was in a little private room with the doors closed at Ruth's Chris. It was this little private thing and -- you know, everyone had been drinking for hours. I went home, and I wasn't going to do the casino thing.

Q. Did you remember BBU paying for the

restaurant portion of that evening?

A. We paid for it. Do I remember actually paying? No, but it definitely was on us.

Q. Did you all put together that lunch? Or how did that lunch come about?

A. The same way all the lunches -- let's go to lunch or can we go to lunch, unless it was a fundraiser. I don't remember it being a fundraiser. In 2004, when I said this, maybe it was fresher in my mind. I just remember it being a long lunch, turning into something else.

Q. We talked about how small a community Gretna is. Was it very common for lawyers to buy each other lunch or buy lunches for judges in that community?

I mean, was this a common practice for people to buy each other lunches at places like the Beef Connection?

A. I think so.

Q. After he became a federal judge, did you do any car repairs for him after he became a federal judge?

A. No, not that I know of.

Q. Did you do any home repairs for him after he became a federal judge?

A. No.

Q. Do you recall personally buying him any lunches after he became a federal judge?

A. Myself, no. I remember, after the Guidry thing, that Louis had either gone to dinner or lunch with him at a place around the courthouse.

Q. Now, you referred to him as I think like friendly or live wire. I can't remember the term you used. But did he have a reputation for helping out young lawyers; that is, encouraging young lawyers in that judicial district?

A. That's a double-edged sword.

Q. I mean, did he have a reputation for helping out young lawyers as they were trying to learn the business?

A. I really don't know about that, but -- you know, being a young person, not educated at the time, I became educated after, did I really get helped being young and naive over time, did that really help me?

Q. But how about other lawyers. I mean, how about lawyers?

A. No, not really. And how much did they really help them? I don't know. Sorry.

Q. No, that's quite all right. Just bear

with me just one second.

MR. TURLEY: Senator, what we would like to do, what happened in the previous deposition next door is -- and we didn't do this in the last deposition, is we would like to reserve a few minutes for a couple of cleanup questions after the managers, as happened in the other one, just because, in the last deposition, we felt that there were questions that were left unclear.

And so with your permission, I would like to do the same thing. I could stop here, let Congressman Johnson do his questions, and I would just like to, at this point, reserve just a few minutes in case -- I don't even know if we will need it, but in case there is some question we want to clear up.

SENATOR UDALL: That's agreeable.

MR. DUBESTER: Senator, that's fine, whatever procedures you discussed, but I would urge that, if we do that, that if we genuinely open up new issues, it's one thing. If it ends up being a rehash of what he's already asked, I would ask you to take that into consideration as we go on the final round of questioning.

SENATOR UDALL: We'll deal

question-by-question.

MR. DUBESTER: Thank you very much.

SENATOR UDALL: It's your turn.

MR. DUBESTER: Understood. I would like to switch with Mr. Turley, so I can talk directly with the witness, if you don't mind?

SENATOR UDALL: Sure.

EXAMINATION

BY MR. DUBESTER:

Q. Ms. Marcotte, thank you for your patience with everybody and for being here today. We know that it's an inconvenience. Nobody likes to have to go through questioning of this nature.

I'm just going to try to go in, roughly, the same sequence that Mr. Turley went. There was this article in 1993 about Barnett. You were shown that. Do you recall being asked that?

A. Yes.

Q. And is it fair to characterize your testimony as that the process of you elbowing out Adam Barnett was not an abrupt one which followed the article, but in fact, was one which went over a process of time; is that fair?

A. Yes, like bad grass kept coming back.

Q. And in fact, you indicated that it was

Barnett who introduced you to Rhonda Danos; is that correct?

A. Yes.

Q. And, you know, from looking at records and your recollection, that you went with Danos, Porteous' secretary, to Las Vegas in 1992; is that correct?

A. Yes.

Q. Do you remember, for example, one thing that you did on that 1992 trip with Danos to Las Vegas?

A. Yes.

Q. Name one thing.

A. We flew over the Grand Canyon.

Q. In fact, you have some certificate about that, that you've turned over to the House of Representatives, and you've seen that as an exhibit in your prior deposition, correct?

A. Yes.

Q. So at least as of '92, you were already forming a relationship with Danos, which was then taking you to having a relationship with Porteous; is that correct?

A. Yes.

Q. So starting in '92, you were working your

relationship with Porteous, maybe not to the exclusion of Adam Barnett, but that process was undergoing, correct?

A. Yes.

Q. And a significant event was the fact that there was this derogatory press about Porteous and Barnett in '93, but even before that, you were having your own relationship with Porteous, correct?

A. Yes.

Q. It didn't start September of '93, correct?

A. Correct.

Q. Now, you were asked several questions about your relationship with Ms. Danos, and you and Louis both are friendly people, if I can just ask you to have a self-serving, complimentary pat on your back statement. You try to be, don't you?

A. Yes.

Q. And you tried to enjoy your time with Rhonda Danos and with the judges, correct?

A. Yes.

Q. With your relationship with Danos, in addition to just friendship part of it, because you want to be friendly when you're with people, was there anything else which was driving you when you were hanging out and paying money for Rhonda Danos?

A. Yes, access to Judge Porteous.

Q. And how was working your relationship with Ms. Danos helping you get a relationship with Judge Porteous as well?

A. All secretaries are gatekeepers for the judge. She was a gatekeeper.

Q. If you needed to find Judge Porteous, could she help you find him?

A. Yes.

Q. If she had to deal with the jail, was it helpful to use her to help you deal with the jail?

A. Yes.

Q. You wanted to be on her good side as well?

A. Yes.

Q. You were asked a bunch of questions, and they were really open-ended questions like, do you remember ever having Rhonda ask you for reimbursement, or do you ever remember giving her reimbursement, and your answers were what they were.

To the extent that you were shown something or were -- sorry, in the future, were to be shown something, confronted with something, seen a document or something else, would that have the capacity to refresh your recollection to the extent that you've made any absolute statements now which

would suggest that fact did or did not occur?

A. Yes, definitely, just by looking at this made me remember.

Q. You were asked if there were ever calls from the DA's office or instances where the DA would object to a bond. Do you recall being asked that question?

A. Yes.

Q. In most instances, when you were dealing with judges, the DAs weren't involved, correct?

A. Yes.

Q. It's an odd thing. The bail bondsman goes to the judge, says, judge -- you know, set the bond this way or this way, or this is the way we recommend it, and it's up to the -- the judge would deal with you directly.

There would be no defense lawyer, there would be no DA in chambers, and that would be the nature of your conversation, correct?

A. Yes, exactly.

Q. On occasion, you indicate that the DA might get involved on a high profile, big arrest, correct?

A. Yes.

Q. But for the most part, the vast, vast

majority of the bonds that Judge Porteous set, there was no consultation with the DA, would you agree with that?

A. Yes.

Q. Now, one of the things that comes through here is Mr. Turley asked you a lot of questions which shows that Judge Porteous was involved in setting bonds, and he would take these steps when he set them.

Why were you doing all these things for Judge Porteous? What were you getting out of him that none of the other judges in the courthouse were giving you at that time?

A. Free reign on bonds.

Q. But you've indicated he would check with the jail, check with others. What was sort of the added value that Judge Porteous was giving you?

A. I don't understand the question.

Q. Well, by giving Judge Porteous these things, taking him to lunch, doing the repairs, taking him to Vegas and so forth, why did you do that?

A. To make money, to get bonds set, to get bonds split.

Q. Would you get access to Judge Porteous

that you wouldn't get from other judges?

A. Yes.

Q. Did Judge Porteous seem to bend over backwards to find ways to set bonds that other judges wouldn't do?

A. Yes.

Q. If you had an incomplete record and another judge would kick you out of the chambers, Judge Porteous would make those phone calls that you described, right?

A. Yes.

Q. He would call from his house, he would call from chambers, he would do what he could to try to set bonds?

A. Yes.

Q. You indicated -- I think this was along the lines of the memory test questions you had before, remembering lunches you had with Judge Porteous when he was a federal judge. Let me throw out a names.

Did you ever have lunch with a judge involving Justice of the Peace Kerner?

A. Yes.

Q. Just so that it's clear that I'm not putting this in your mind.

A. Yes. I totally forgot about that one. That was big too.

Q. Just explain why it's big, so that people can see it's your memory, not mine, that's at issue here.

A. My brother is pretty smart too, like he started looking at the bail law, and we understood that justice of the peaces could set bonds that were with or without hard labor, so besides bringing in the judicial judges that were elected to the table with Porteous, we started bringing the parish judges that did traffic tickets, and then we brought the justice of the peaces in, also, and one of them was this Tim Kerner.

He's from Lafitte, Louisiana, and that's where Rhonda Danos is from, Lafitte, Louisiana. She knew him well. I think he was a major -- the mayor's court. The mayor's court can set bond municipalities like that. And we were trying to sell him on the commercial bond thing, Judge Porteous and us, and we went to lunch at the Beef Connection, and my brother brings the law book with him and starts to show Tim Kerner about how justice of the peaces and mayor's courts can set bonds.

Q. How did that lunch come about?

A. Rhonda's from the same town. We wanted to get all the justice of the peaces to start setting bonds too.

Q. So let me make sure I understand this.

A. We wanted more people working for us, so to speak.

Q. So you called Rhonda, a woman you've taken to Las Vegas, and say, put together a lunch, which includes Judge Porteous and Justice of the Peace Kerner, and that's pretty much what happened?

A. The mayor of your town, yes.

Q. And let me make sure I understand this. You're in the bail bonds business. Louis is in the bail bonds business. Some people might not think too highly of bondsmen or what have you, so the two of you are sitting there with a federal judge and a justice of the peace and with Judge Porteous at the table.

Louis is opening up bail bondsmen, and at a lunch, trying to explain to Justice of the Peace Kerner what he could do to set bonds for you, is that pretty much it?

A. That and Judge Porteous explaining that he would eat a lot of lunch, and Kerner didn't like it. He got up and said, I don't like this. He stood up

from the table and left.

Q. What about was there ever any lunches with Justice of the Peace Centanni?

A. Yes. He did the same thing too. He didn't like it either. He did not like the commercial bonds, the commercial bonds. They weren't buying that because it didn't really help them in their little town.

Q. But Judge Porteous helped try to cement a relationship with you and Justice of the Peace Centanni; is that correct?

A. Yes.

Q. What about were there lunches --

A. Centanni did set a couple of bonds for us, but that's quickly faded.

Q. Did Judge Porteous ever go to lunch with you with Norman Stotts?

A. Yes.

Q. And who is Norman Stotts?

A. Norman Stotts was our boss of the insurance company. He decided on our writing authority, how big of a bond we could write, how much collateral we needed, how to facilitate approving a large bond to also to keep us in business, to make sure that our --

Q. Was Norman Stotts an important person for your company?

A. Yes. He was our boss, so to speak, yes.

SENATOR UDALL: Counsel, you've used about 10 minutes of your 20.

MR. DUBESTER: Thanks so much.

BY MR. DUBESTER:

Q. When you're writing bonds, basically you're writing an insurance policy?

A. Yes.

Q. You're an insurance agent?

A. Yes.

Q. Mr. Stotts is the company for whom you're writing?

A. Yes.

Q. Just to be very clear about this, Judge Porteous, knowing that you had given him things of value when he was a state judge, when he's wearing a federal robe, conceptually, is at lunches with you guys while you're trying to do business with either of these other judges or with Norman Stotts; is that correct?

A. Yes.

Q. There was a couple of questions which were asked, how many bonds do you write in a day, and then

later in the questioning, the question was how much bonds did you write that Judge Porteous approved in this October timeframe after he was a judge.

Is there any question in your mind that Judge Porteous was the single most important person in writing or approving or signing bonds and splitting and reducing and everything that you've described when he was a state court judge in the Gretna courthouse?

A. In training the other judges.

Q. Yes, and in helping you with the other judges. Is he clearly the most important?

A. Yes.

Q. And you took other judges out to lunch, but most of the time, that was with Judge Porteous, when Judge Porteous was a state judge, right?

A. Yes.

Q. Now, the other thing is --

A. I think we had gone to lunch with Judge Green's staff when Judge Porteous was a federal judge at the Beef Connection too, so I really did forget a lot.

Q. There were several questions that Mr. Turley asked, which, if you analyze the sequence of the questions, could be read as consulting with

the lawyers, talking with the lawyers, paying of the lawyers.

Just to be clear, the request to set aside Duhon's conviction and Aubrey Wallace's conviction in both instances came from you and Louis to Judge Porteous; is that correct?

A. Yes.

Q. And this business about getting the lawyers, that was the technical necessity to get it done; is that correct?

A. Yes.

Q. There was a question: What do you pay the lawyer? Your best recollection is you didn't pay the lawyer anything, did you?

A. No.

Q. And the question about arranging for counsel, that was --

A. That was to make it look right.

Q. The fact is, these expungements, after you dealt with Judge Porteous, in your mind, they were totally wired, that on your request, Judge Porteous was going to expunge or set aside those convictions; isn't that correct?

A. Yes.

Q. Now, a lot of these questions involve

Senator Breaux. When you all are paying for this limo trip or whatever it involved with Senator Breaux, in fact, that's a great benefit to Judge Porteous, isn't it?

A. Yes.

Q. Because Senator Breaux, he wasn't there to hang out with you and Louis. He was there for Judge Porteous, right?

A. Yes.

Q. So you're helping Judge Porteous entertain Senator Breaux. Isn't that what was going on?

A. Yes.

Q. And the same thing, when Judge Porteous gets all his friends at those lunches, in your mind, you're dropping $100 or $200 on Judge Porteous, not $20 on Judge Porteous and $80 or whatever it is on the rest of them. That's money dropped on Judge Porteous, right?

A. A thousand, you mean.

Q. Well, whatever the amount is, it's money, even if there are other people at the table, it's so Judge Porteous can be the big shot, the center of the table, it's for his entertainment, and that's who you, in your own mind, are spending money on; is that right?

A. That's right.

Q. You have no doubt that, because of those things you were doing, Judge Porteous took the extra step every time he could exercise discretion in your behalf; is that correct?

A. Yes.

Q. And finally, I'm going to turn it over to Representative Johnson, while I think of one more question.

EXAMINATION

BY CONGRESSMAN JOHNSON:

Q. Tell me, Ms. Marcotte, it was in your mind that making Judge Porteous available to the other state court judges after he ascended to the federal court bench would make your business look better in the eyes of those people that he was introducing you to?

A. Yes.

Q. And do you have any doubt whether or not Judge Porteous saw that he could profit from that relationship with you?

A. Yes, yes.

Q. And why do you say that?

A. Like in all the relationships where people were brought to the table, it was a networking thing

for Judge Porteous to add them to the lunch list, to add them to the casino, you know, different people brought different things to the table that he could get out of them, so to speak.

Q. And he did get things out of them?

A. Yes.

Q. Such as trips to Las Vegas, correct?

A. Yes.

Q. Trips to Mississippi for gambling purposes?

A. Yes, trips to New Orleans east.

Q. Hunting trips?

A. Yes.

Q. Fishing trips, correct?

A. Drinking trips.

Q. Drinking trips. Cash money, also?

A. I don't know about that personally.

Q. Are you aware of any instances where Judge Porteous took cash money after he became a federal district court judge?

A. Yes, from what I read in the paper, what's been in the news.

Q. But you, yourself, or your bail bonding company did not give any cash to the judge?

A. Not that I recall.

Q. After he became a federal court judge?

A. Not that I recall.

EXAMINATION

BY MR. DUBESTER:

Q. And my final question, Senator, is as follows: Just to be clear, the record should be clear, you, yourself, pleaded guilty to conspiracy to commit mail fraud, and the underlying facts were all the things that you did to give things to judges, jailers, and so forth, in the 24th JDC, that's the 24th Judicial District Court, where Judge Porteous had presided; is that right?

A. Yes.

Q. So you're basically a convicted felon for having done that, as you sit here today?

A. Yes.

Q. Are you still on supervision, by the way?

A. No.

Q. And two of the judges that you gave things to, Judge Bodenheimer and Judge Green, also pleaded guilty, correct?

A. Yes.

Q. And in your mind, is Judge Porteous' conduct any different, than you know, than that of Judge Bodenheimer or Judge Green, in terms of the

quality and quantity of what you gave and what he did for you?

A. It was no different.

MR. DUBESTER: Thank you very much.

EXAMINATION

BY MR. TURLEY:

Q. Ms. Marcotte, I'm not going to keep you very long.

A. That's okay.

Q. Which I'm sure you'll be happy to know. I just have a few clarifying questions.

A. Okay.

Q. And you'll be free to go.

First of all, this lunch that was raised by opposing counsel with Judge Kerner, do you remember discussing that with him?

A. Yes.

Q. You say there was a book brought there. Was this consistent with what you referred to before as training judges, showing them how to do bonds? Was that consistent with what you earlier referred to as training?

A. No.

Q. So what was your brother trying to do by showing the book to Kerner?

A. A lot of justice of the peaces didn't know they could set bonds. That was a different kind of training. That was just special for the justice of the peaces. The other judges that were 24th judges knew they could set bonds.

Q. Did Kerner know?

A. I don't think so. I don't know.

Q. So is it accurate to say that your brother was trying to show Kerner that he could set bonds, by opening the book?

A. Yes.

Q. And you had stated earlier that Judge Porteous would often talk about the value of commercial bonds in the criminal system. Do you remember that?

A. Yes.

Q. That he felt strongly about that?

A. Yes.

Q. In your lunch with -- is it Stotts?

A. Yes.

Q. Norman Stotts. Is it accurate to say that the limitation put on the insurance company prevented you all from doing as many bonds as you wanted? I mean, it was a limitation on the amount of bonds you could do?

A. Not so much on the amount of bonds, but on the writing authority, one bond, like we could write a million dollar bond. No other bail bond company could do that. You have to have a lot of assets, a lot of things up, or you have to convince the insurance company that you're really established, that you're connected, that you're not just going to just write a bond and leave town, that you're not fly by night, you're established in the community, and you have some assets and some money, of course.

You know, if you write a couple of million dollar bonds and the people skip town, you're out of business. The insurance company could go down too.

Q. So what were you trying to get from Stotts specifically?

A. Trying to get writing authority.

Q. And if got more writing authority, you could, presumably, do a larger bond business? Is that accurate to say?

A. In one bond, to have the writing -- we could write -- I mean, we had, I told you, at one point, 40,000-something items. So if one person has four or five items, and they have a $500 traffic ticket and this, that, and the other, the amount of items don't necessarily mean the penal liability.

Of course, a lot of items add up to something big, but I'm talking about the writing authority of one bond, to be able to write, that's a big risk for an insurance company. The insurance company sometimes has to make the decision not just based on solid assets, but based upon the security of the person that owns the business, the security of the connections, almost like the flight risk of a Defendant.

Q. Was Judge Porteous the chief judge at one point in that judicial district?

A. Yes, they all were at one point. It was rotating each year also.

Q. Do you think he cared about the judicial district and how it was run? Did he seem to take pride in that?

A. I don't know how to answer that. I think he liked being a judge, and I really think he had really good intentions to be a great judge, and he had a brilliant mind. I just think -- you know, he got sidetracked sometime.

Q. I want to clarify something.

A. He's not a bad guy. It's just people have issues sometimes. I have my own too.

Q. You had mentioned to my colleague that

Rhonda put together the lunch with Kerner. The questions were coming fast at that point. I wasn't quite sure.

A. Yes.

Q. Did the idea of that lunch come from Rhonda or did it come from you or your brother to have that lunch?

A. No, it came from my brother. Let's give -- we found out the justice -- Lou was kind of like crazy at one point. We want all the bail, let's get everybody. You know, greed had taken over us too. We wanted to go get every judge to set every bond we could, so we could write everybody out of jail.

And so we charged -- the justice of the peace, can you get Kerner's -- Rhonda -- I know Kerner. That's a known fact that Rhonda was from Lafitte. We talked about that many times. Rhonda, get Kerner to come, you know, she made the call to him.

Q. I've only got a couple more questions. You were asked, sort of quickly, did you pay for the lawyer for Duhon and Wallace? And when I asked you the question, you said you didn't know whether you paid or not, but then it seemed -- I might have

misheard it, but I thought you said that you had -- was it had not paid for the lawyer?

A. I said to you that we gave a lot of attorneys criminal cases. They had a lot. They call it vultures outside our office, wanting us to throw them a bone. Well, they're all out there. They're young lawyers, these young aspiring lawyers, like you asked me about earlier. They need business. They need to survive.

So give them a few cases and, hey, do me a favor now kind of thing.

Q. Oh, I see. So you think that --

A. I think it was a trade. Hey, here's a case, and I don't know about one particular bond that was -- and maybe they were paid or maybe, here, we made a big bond, here is 500 -- I mean, I don't know how they were paid, but they were not hired like, let me retain you for my brother-in-law, let's sign a retainer and go sit in there. No. They were somebody hanging outside the office, trying to get some free business.

Q. That's fine. Here is my question: At the very end, you were asked, look, when you had these big lunches and you were spending a thousand dollars on lunches, wasn't that money really going to

Porteous, weren't part of his lunches your effort to develop relationships with other judges; isn't that correct?

A. Yes, but what I meant by that was Judge Porteous was the king of the table. He wanted an audience. He really thrived on that. He was a funny guy. I mean, he was an entertainer.

Q. But wasn't the value of the lunches for you and your brothers in developing connections with other judges through these lunches?

A. To maximize profits for our business, yes, to write as much as we could and make as much money.

Q. And Judge Porteous didn't get any of that money from the lunch, correct? He didn't get any of the cash from that lunch, did he?

A. No, but he was an entertainment venue, and sometimes, he was booked. We couldn't get in because -- I remember a few times an attorney in his office, us fighting over who was going to be the one to take him to lunch. Everybody wanted that audience, wanted to be the audience.

Q. Do you recall at the Breaux lunch, was there federal legislation pending at the time of that lunch?

A. Yes.

Q. And it involved your industry?

A. Yes. I don't remember exactly because, every year, we fought legislation, so I don't know exactly which one, but it was something very important. I think it was getting rid of bail. That's what that one was. 10 percent.

Q. And isn't it true that Breaux, for that reason, was important to you and your brother, in terms of that legislation?

A. Yes.

Q. So that lunch was not just to build Judge Porteous up, right? It also had a purpose for you and your brother of a connection with Breaux; isn't that correct?

A. Yes, but we knew Breaux wasn't going to come to lunch with us.

Q. Now, I just want to confirm the purpose of the lunch.

MR. DUBESTER: I would ask to let her finish the answer.

BY MR. TURLEY:

Q. I'm sorry. I did interrupt you. What was the purpose?

A. We weren't going to call John Breaux and say, let's talk about this legislation. He wasn't

going to come to lunch with us, but -- you know, throw a limousine and two pretty girls and a casino, then he's going to come. Well, how do you get that?

You're not going to get it with me calling him. It's going to be with Porteous, and if Porteous wants to go to the casino and a limousine and with two girls -- it is what it is.

Q. But the interests of you and your brother at that time, there was a lot of focus on that legislation, correct?

A. Let's keep making money, yes. It all boils down -- don't take our bread out of our corner. We're going to come out fighting. Let's do something about it. Let's go to the casino.

MR. TURLEY: Ms. Marcotte, I want thank you very much. I know this has been a grueling experience for you. And Senator, thank you very much for allowing us to ask some follow-up questions.

EXAMINATION

BY CONGRESSMAN JOHNSON:

Q. Judge Porteous would benefit greatly by coming to the conventions that the bail bond industry put on out in Las Vegas on a yearly basis; is that correct?

A. As a state judge?

Q. As a federal judge.

A. As a federal judge?

Q. Let me ask you this question: Isn't it a fact that as a federal judge -- your bail bonding company paid Judge Porteous' expenses to come to Las Vegas and present to state court judges about Louisiana bail law?

A. Yes, and also other states too, he was talk to talk about that, to keep that in the whole nation of bail because, as an organization -- you know, you want unity, everybody pushing together.

Q. And my question is: Your bonding company, your bail bond company paid for his expenses in going out there, correct?

A. He went a couple of times. We paid -- I'm not sure exactly -- yes, we paid some expenses. Did we pay all?

Q. You paid for his room?

A. When he spoke at the convention, the convention would pay a block of rooms, but we paid for drinks, we paid for entertainment, we paid for dinners, we paid for -- you know, when Porteous was in Vegas, we didn't want him to get in the hands of other people.

We reeled him into us. We wanted to spend

money on us. So did we pay for every single expense? The convention may have paid for some, but we paid for many.

Q. It was a mutually beneficial arrangement that you had with Judge Porteous, correct?

A. Yes, that's correct.

SENATOR UDALL: Any other requests for questions?

MR. TURLEY: No, thank you, Senator.

SENATOR UDALL: Having heard no others, the deposition is completed.

(Whereupon, at 4:00 p.m., the taking of the instant deposition ceased.)

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Bank One, NA
Louisiana Market
P.O. BOX 92102
Bedford , TX 76095-2102

1 32 16 38753

Acct # [redacted]
Taxpayer ID# [redacted]

G THOMAS PORTEOUS JR
OR MRS G THOMAS PORTEOUS
4801 BEYNEY DR
METAIRIE LA 70002-1426

Aug 23 through Sep 25, 2001

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INTEREST ONE CHECKING
Account number [redacted]

	Amount
Interest earned this statement period	$2.63
Annual Percentage Yield Earned this statement period	0.72%
Interest paid this year	$24.25
Beginning balance	$775.53
Checks paid	- 6,449.13
Other withdrawals	- 2,677.91
Deposits	+ 9,675.52
Checking balance as of Sep 25	$1,324.01

Checks paid

Number	Amount	Date paid	Number	Amount	Date paid
4186	25.00	08-29	4205	43.49	09-05
4187	68.60	09-10	4206	60.00	09-11
4189*	48.36	09-06	4207	5.10	09-11
4190	49.76	09-14	4208	50.00	09-18
4191	175.00	09-07	4209	74.50	09-10
4192	49.01	09-10	4210	48.39	09-10
4193	330.00	09-19	4211	38.86	09-14
4194	330.15	09-19	4212	97.00	09-21
4195	390.00	09-04	4213	62.32	09-12
4196	200.00	09-06	4214	120.00	09-18
4197	1,453.10	09-06	4215	23.78	09-20
4198	57.99	09-17	4216	250.00	09-24
4200*	100.00	09-10	4217	1,603.00	09-18
4201	202.00	09-05	4218	226.00	09-24
4202	163.26	09-05	4221*	25.00	09-21
4203	33.98	09-05			6,449.13
4204	43.48	09-05			

* Checks not listed were shown on a previous statement or had not yet cleared as of 09-25-01.

continues

HP Exhibit 451

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1 32 16 38754

G THOMAS PORTEOUS JR

Acct # [redacted]
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Other withdrawals including charges and fees

Date	Description					
08-24	Bank One ATM Withdrawal	004635	08/243420	Severn Ave. Metairie LA		300.00
08-28	State Farm Ro 22Insurance	0392761822		PPD		203.93
08-31	Pulse Withdrawal Fee					1.50
08-31	Pulse Withdrawal Orleans LA	001663	08/314	Canal St Harrahs New		64.00
09-06	Pulse Withdrawal Fee					1.50
09-06	Pulse Withdrawal Orleans LA	003464	09/064	Canal St Harrahs New		64.00
09-06	Pulse Withdrawal Fee					1.50
09-06	Pulse Withdrawal Orleans LA	006366	09/064	Canal Harrahs 10 New		104.00
09-10	Bank One ATM Withdrawal	005445	09/083420	Severn Ave. Metairie LA		120.00
09-10	Bank One ATM Withdrawal	005699	09/083540	Williams Blvd Kenner LA		140.00
09-10	Bank One 552 Loan Paymt	000346000203579		PPD		493.95
09-12	Bank One ATM Withdrawal LA	002299	09/121400	Veterans Blvd Metairie		20.00
09-13	Bank One ATM Withdrawal	008375	09/123420	Severn Ave. Metairie LA		140.00
09-13	Pulse Withdrawal Fee					1.50
09-13	Pulse Withdrawal Orleans LA	008863	09/124	Canal Harrahs 10 New		144.00
09-14	Bank One ATM Withdrawal	006213	09/123420	Severn Ave. Metairie LA		140.00
09-14	Pulse Withdrawal Fee					1.50
09-16	Pulse Withdrawal LA	462382	09/145050	Williams Blvd . Kenner		143.00
09-17	Bank One ATM Withdrawal	007891	09/153540	Williams Blvd Kenner LA		100.00
09-18	Shoe Station EFT	4219		POP		192.56
09-20	Aaye Hallmark EFT	4227		POP		24.47
09-21	Bank One ATM Withdrawal	009551	09/203540	Williams Blvd Kenner LA		80.00
09-21	Pulse Withdrawal Fee					1.50
09-21	Pulse Withdrawal LA	450017	09/205050	Williams Blvd . Kenner		83.00
09-24	Bank One ATM Withdrawal	000927	09/243540	Williams Blvd Kenner LA		100.00
09-25	Service Fee					12.00
						2,677.91

Fees and Charges When you maintain a minimum Interest One Checking balance of $1,500.00 or a combined minimum balance of $5,000.00 in linked qualifying checking and savings accounts or a combined minimum balance of $15,000.00 in qualifying linked deposit and credit accounts each day during the statement period, your Interest One Checking monthly service fee is waived. On 08/23/01, your Interest One Checking balance was $775.00, combined minimum balance in linked qualifying deposit accounts was $775.00, and combined minimum balance in qualifying linked deposit and credit accounts was $775.00.

continues

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G THOMAS PORTEOUS JR

1 32 16 38755

Acct # [redacted]
Aug 23 through Sep 25, 2001
Page 3 of 4

Deposits and other additions

Date	Description			
08-31	Usc Treas 310 Fed Salary [redacted]	PPD		8,517.07
09-05	Deposit			100.00
09-05	Deposit			206.41
09-07	Deposit			132.84
09-13	Deposit			470.00
09-18	Deposit			232.00
09-20	Deposit			14.57
09-25	Interest Payment			2.63
				9,675.52

Account Daily Balance
Beginning Balance $775.53

Date	Description	Amount	Balance	Batch req no
08-24	BANK ONE ATM WITHDRA	$300.00	$475.53	0000000000240046S5
08-28	STATE FARM RO 221NSU	$203.93	$271.60	0000000123998200439
08-29	CHECK	$25.00	$246.60	0000000553062627648
08-31	USC TREAS 310 FED	$8,517.07	$8,763.67	0000000124213263S8
08-31	PULSE WITHDRAWAL FEE	$1.50	$8,762.17	0000000000250016S3
08-31	PULSE WITHDRAWAL	$54.00	$8,698.17	0000000000240016S3
09-04	CHECK	$390.00	$8,308.17	0000000553063843119
09-05	DEPOSIT	$100.00	$8,408.17	0000000553064164419
09-05	DEPOSIT	$206.41	$8,614.58	0000000553063346633
09-05	CHECK	$202.00	$8,412.58	0000000553062940290
09-05	CHECK	$163.26	$8,249.32	0000000553063478926
09-05	CHECK	$33.98	$8,215.34	0000000553063478498
09-05	CHECK	$43.48	$8,171.86	0000000553063315238
09-05	CHECK	$43.49	$8,128.37	0000000553063478461
09-06	PULSE WITHDRAWAL FEE	$1.50	$8,126.87	0000000000250034S4
09-06	PULSE WITHDRAWAL	$64.00	$8,062.87	0000000000240034S4
09-06	PULSE WITHDRAWAL FEE	$1.50	$8,061.37	0000000000250063S6
09-06	PULSE WITHDRAWAL	$104.00	$7,957.37	0000000000240063S6
09-06	CHECK	$48.36	$7,909.01	0000000553062247706
09-06	CHECK	$200.00	$7,709.01	0000000553063671323
09-06	CHECK	$1,453.10	$6,255.91	0000000553064326783
09-07	DEPOSIT	$132.84	$6,388.75	0000000553062458029
09-07	CHECK	$175.00	$6,213.75	0000000553062533683
09-10	BANK ONE ATM WITHDRA	$120.00	$6,093.75	0000000000240054S5
09-10	BANK ONE ATM WITHDRA	$140.00	$5,953.75	0000000000240056S9
09-10	BANK ONE 552 LOAN	$493.95	$5,459.80	0000000125048933S6
09-10	CHECK	$68.60	$5,391.20	0000000553063442537
09-10	CHECK	$49.01	$5,342.19	0000000553063550768
09-10	CHECK	$100.00	$5,242.19	0000000553062603533
09-10	CHECK	$74.50	$5,167.69	0000000553062573619
09-10	CHECK	$48.39	$5,119.30	0000000553062573618
09-11	CHECK	$60.00	$5,059.30	0000000553062062450
09-11	CHECK	$5.10	$5,054.20	0000000553064818757
09-12	BANK ONE ATM WITHDRA	$20.00	$5,034.20	0000000000240022S9
09-12	CHECK	$62.32	$4,971.88	0000000553062431458
09-13	DEPOSIT	$470.00	$5,441.88	0000000553063178789
09-13	BANK ONE ATM WITHDRA	$140.00	$5,301.88	0000000000240083S5
09-13	PULSE WITHDRAWAL FEE	$1.50	$5,300.38	0000000000250088S3
09-13	PULSE WITHDRAWAL	$144.00	$5,156.38	0000000000240088S3
09-14	BANK ONE ATM WITHDRA	$140.00	$5,016.38	0000000000240062l3
09-14	PULSE WITHDRAWAL FEE	$1.50	$5,014.88	0000000000254623S2
09-14	PULSE WITHDRAWAL	$143.00	$4,871.88	0000000000244623S2
09-14	CHECK	$49.76	$4,822.12	0000000553063341128
09-14	CHECK	$38.86	$4,783.26	0000000553063398282
09-17	BANK ONE ATM WITHDRA	$100.00	$4,683.26	0000000000240078S1
09-17	CHECK	$57.99	$4,625.27	0000000550645310151
09-18	DEPOSIT	$232.00	$4,857.27	0000000553064072450
09-18	Shoe Station EFT	$192.56	$4,664.71	0000000126086436S5
09-18	CHECK	$1,605.00	$3,059.71	0000000553063474346
09-18	CHECK	$50.00	$3,009.71	0000000553063292231

continues

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1 32 16 38756

G THOMAS PORTEOUS JR

Acct # [redacted]
Aug 23 through Sep 25, 2001
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Account Daily Balance
Beginning Balance $775.53

Date	Description	Amount	Balance	Batch seq no
09-18	CHECK	$120.00	$2,989.71	0000000550633675O3
09-19	CHECK	$330.00	$2,559.71	0000000550628132G5
09-19	CHECK	$330.15	$2,229.56	0000000550628132G5
09-20	DEPOSIT	$14.57	$2,244.13	0000000550642961A1
09-20	AMTS HALLMARK EFT	$24.47	$2,219.66	0000000126206727S6
09-20	CHECK	$23.78	$2,195.88	0000000550642948T8
09-21	BANK ONE ATM WITHDRA	$80.00	$2,115.88	0000000000240095S1
09-21	PULSE WITHDRAWAL FEE	$1.50	$2,114.38	0000000000254500I7
09-21	PULSE WITHDRAWAL	$83.00	$2,031.38	0000000000244500I7
09-21	CHECK	$97.00	$1,934.38	0000000550644187O6
09-21	CHECK	$25.00	$1,909.38	0000000550644574S1
09-24	BANK ONE ATM WITHDRA	$100.00	$1,809.38	0000000000240009Z7
09-24	CHECK	$280.00	$1,559.38	0000000550634942O4
09-24	CHECK	$226.00	$1,333.38	0000000550627204T9
09-25	SERVICE FEE	$12.00	$1,321.38	0000000000000000000
09-25	INTEREST PAYMENT	$2.63	$1,324.01	0000000000000000000

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Bank One, EA
Louisiana Market
P.O. Box 92102
Bedford , TX 76095-2102

1 39 16 35904

Acct # [redacted]

G THOMAS PORTEOUS JR
OR MRS G THOMAS PORTEOUS
4801 HEYREY DR
METAIRIE LA 70002-1426

Aug 23 through Sep 24, 2002

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INTEREST ONE CHECKING
Account number [redacted]

	Amount
Interest earned this statement period	$0.44
Annual Percentage Yield Earned this statement period	0.24%
Interest paid this year	$5.67
Beginning balance	$575.08
Checks paid	- 7,322.48
Other withdrawals	- 2,184.83
Deposits	+ 9,150.73
Balance as of Sep 24	$208.50

Checks paid

Number	Amount	Date paid	Number	Amount	Date paid
4675	30.00	08-27	4696	134.00	09-09
4677*	60.00	09-03	4697	390.00	09-03
4678	99.07	08-26	4698	200.00	09-05
4679	120.00	09-03	4699	95.00	09-16
4680	80.00	09-03	4700	330.15	09-16
4681	100.00	09-05	4701	330.00	09-16
4682	1,444.92	09-04	4702	80.00	09-04
4683	107.90	09-09	4703	29.95	09-05
4684	50.00	09-09	4704	80.00	09-10
4685	400.00	09-09	4705	80.25	09-24
4686	126.26	09-09	4706	16.00	09-19
4687	25.00	09-04	4708*	60.00	09-10
4688	169.00	09-04	4709	263.00	09-10
4689	5.10	09-05	4710	36.48	09-18
4690	93.65	09-06	4711	19.75	09-16
4691	25.00	09-09	4714*	1,600.00	09-16
4692	50.98	09-04	4715	60.00	09-18
4693	300.00	09-09	4716	40.94	09-17
4694	48.00	09-06	4717	50.00	09-19
4695	60.08	09-10	Total	7,322.48	

* Checks not listed were shown on a previous statement or had not yet cleared as of 09-24-02.

Other withdrawals including charges and fees

Date	Description			
08-23	Bank One Card Purchase Metairie LA	08/21Amoco	08103400	15.01
08-23	Bank One ATM Withdrawal Kenner LA	003741 08/223540 Williams Blvd		100.00
08-26	Bank One Card Purchase LA	007752 08/23Samsclub $4775 Metairie		52.01

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G THOMAS PORTEOUS JR

Acct # [redacted]
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Other withdrawals including charges and fees

Date	Description			Amount
08-27	Bank One Card Purchase LA	001539 08/26Eckerd Corpora Metairie		20.76
08-27	State Farm Re 22Insurance	0392761822	PPD	157.13
08-28	Bank One ATM Withdrawal Metairie LA	002339 08/283420 Severn Ave.		20.00
08-29	Bank One ATM Withdrawal Kenner LA	003822 08/283540 Williams Blvd		60.00
09-03	Bank One Card Purchase	09/01Danny & Clyd Metairie LA		25.01
09-03	Pulse Withdrawal Fee			1.50
09-03	Pulse Withdrawal Kenner LA	455663 09/025050 Williams Blvd .		63.00
09-03	Pulse Withdrawal Fee			1.50
09-03	Pulse Withdrawal Kenner LA	455679 09/025050 Williams Blvd .		63.00
09-04	Bank One Card Cash Back Metairi920607 LA	040511 09/03Sou Sav-A-Cent		68.85
09-04	Bank One ATM Withdrawal Metairie LA	005174 09/033783 Veterans Blvd		100.00
09-05	Bank One Card Purchase Metairie LA	09/03Erics of Metairie		32.62
09-09	Bank One Card Purchase LA	034798 09/08Breaux Mart #4 Metairie		26.63
09-09	Bank One Card Purchase Metairie LA	09/07Mac Frugals #000D41509		33.58
09-09	Bank One ATM Withdrawal Metairie LA	004948 09/093420 Severn Ave.		60.00
09-09	Pulse Withdrawal Fee			1.50
09-09	Pulse Withdrawal Orleans LA	007251 09/094 Canal St Harrahs New		64.00
09-09	Pulse Withdrawal Fee			1.50
09-09	Pulse Withdrawal Orleans LA	007244 09/094 Canal St Harrahs New		104.00
09-09	Bank One 552 Loan Paymt	000340000203579	PPD	493.95
09-16	Bank One ATM Withdrawal Metairie LA	000877 09/134545 Veterans Blvd		20.00
09-16	Bank One ATM Withdrawal Orleans LA	008605 09/16601 Poydras St. New		60.00
09-16	Bank One ATM Withdrawal Metairie LA	006172 09/163420 Severn Ave.		100.00
09-16	Bank One Card Purchase	09/12Adlers New Orleans LA		141.10
09-18	Bank One Card Purchase	09/16T & T Store Metairie LA		25.51
09-19	Bank One ATM Withdrawal Metairie LA	008755 09/183783 Veterans Blvd		100.00
09-20	Bank One ATM Withdrawal Metairie LA	006883 09/203420 Severn Ave.		60.00

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G THOMAS PORTEOUS JR

Acct # [redacted]
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Other withdrawals including charges and fees

Date	Description				
08-23	Bank One Card Purchase Metairie LA		09/19Discount	26653345	21.00
08-24	Bank One Card Purchase LA	087362	09/23Breaux Mart #4 Metairie		31.70
08-24	Bank One Card Purchase LA	360669	09/24Sou Sav-A-Cent Metairie		49.97
08-26	Service Fee				12.00
					2,194.83

Fees and charges When you maintain a minimum Interest One Checking balance of $1,500.00 or a combined minimum balance of $5,000.00 in linked qualifying checking and savings accounts or a combined minimum balance of $15,000.00 in qualifying linked deposit and credit accounts each day during the statement period, your Interest One Checking monthly service fee is waived. On 08/23/02, your Interest One Checking balance was $575.00. combined minimum balance in linked qualifying deposit accounts was $575.00, and combined minimum balance in qualifying linked deposit and credit accounts was $575.00.

Deposits and other additions

Date	Description			
08-29	Deposit			250.30
09-03	Usc Treas 310 Fed Salary [redacted]		PPD	8,648.35
09-17	Deposit			201.64
09-23	Deposit			50.00
09-24	Interest Payment			0.44
				9,150.73

Account Daily Balance
Beginning Balance $575.08

Date	Description	Amount	Balance	Batch seq no
08-23	BANK ONE CARD PURCHA	$19.01	$560.07	0000000000024051189
08-23	BANK ONE ATM WITHDRA	$100.00	$460.07	0000000000024003741
08-26	BANK ONE CARD PURCHA	$52.01	$408.06	0000000000024007752
08-26	CHECK 4678	$99.07	$308.99	0000000006430685372
08-27	BANK ONE CARD PURCHA	$28.76	$280.23	0000000000024001539
08-27	STATE FARM RO 221ESU	$157.13	$123.10	0000000002662424042
08-27	CHECK 4675	$30.00	$93.10	0000000006330029842
08-28	BANK ONE ATM WITHDRA	$20.00	$73.10	0000000000024002339
08-29	DEPOSIT	$250.30	$323.40	0000000006330680906
08-29	BANK ONE ATM WITHDRA	$60.00	$263.40	0000000000024095822
09-03	USC TREAS 310 FED	$8,648.35	$8,911.75	0000003600001237701
09-03	BANK ONE CARD PURCHA	$25.01	$8,886.74	0000000000024211839
09-03	PULSE WITHDRAWAL FEE	$1.50	$8,885.24	0000000000025455663
09-03	PULSE WITHDRAWAL	$63.00	$8,822.24	0000000000024455663
09-03	PULSE WITHDRAWAL FEE	$1.50	$8,820.74	0000000000025455679
09-03	PULSE WITHDRAWAL	$63.00	$8,757.74	0000000000024455679
09-03	CHECK 4680	$80.00	$8,677.74	0000000006230636378
09-03	CHECK 4697	$390.00	$8,287.74	0000000006230780551
09-03	CHECK 4677	$60.00	$8,227.74	0000000006330130316
09-03	CHECK 4679	$120.00	$8,107.74	0000000006430274678
09-04	BANK ONE CARD CASH B	$68.85	$8,038.89	0000000000024040511
09-04	BANK ONE ATM WITHDRA	$100.00	$7,938.89	0000000000024005174
09-04	CHECK 4682	$1,444.92	$6,493.97	0000000006330633938
09-04	CHECK 4687	$25.00	$6,468.97	0000000006330653325
09-04	CHECK 4688	$169.00	$6,299.97	0000000006330639280
09-04	CHECK 4692	$50.98	$6,248.99	0000000006330812627
09-04	CHECK 4702	$80.00	$6,168.99	0000000006330816437
09-05	BANK ONE CARD PURCHA	$32.62	$6,136.37	0000000000024050041
09-05	CHECK 4681	$100.00	$6,036.37	0000000006430242700
09-05	CHECK 4689	$5.10	$6,031.27	0000000006430216329
09-05	CHECK 4698	$200.00	$5,831.27	0000000006430251759

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G THOMAS FORTEOUS JR

Acct # [redacted]
Aug 23 through Sep 24, 2002
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Account Daily Balance
Beginning Balance $575.08

Date	Description		Amount	Balance	Batch seq no
09-05	CHECK	4703	$29.95	$5,801.32	0000000063301160B5
09-06	CHECK	4690	$93.65	$5,707.67	0000000063302210S5
09-06	CHECK	4694	$48.00	$5,659.67	0000000063305279I2
09-09	BANK ONE CARD PURCHA		$26.63	$5,633.04	0000000000240347B8
09-09	BANK ONE CARD PURCHA		$33.58	$5,599.46	0000000000241553A6
09-09	BANK ONE ATM WITHDRA		$60.00	$5,539.46	0000000000240048A8
09-09	PULSE WITHDRAWAL FEE		$1.50	$5,537.96	0000000000250072S1
09-09	PULSE WITHDRAWAL		$64.00	$5,473.96	0000000000240072S1
09-09	PULSE WITHDRAWAL FEE		$1.50	$5,472.46	0000000000250072A4
09-09	PULSE WITHDRAWAL		$104.00	$5,368.46	0000000000240072A4
09-09	BANK ONE 552	LOAN	$493.95	$4,874.51	0000000000330961З0
09-09	CHECK	4683	$107.90	$4,766.61	0000000062301342Z4
09-09	CHECK	4684	$50.00	$4,716.61	0000000062301021З1
09-09	CHECK	4685	$400.00	$4,316.61	0000000062301059A1
09-09	CHECK	4686	$156.26	$4,160.35	0000000062300691B3
09-09	CHECK	4691	$25.00	$4,135.35	0000000062300646I6
09-09	CHECK	4693	$300.00	$3,835.35	0000000062301034Т8
09-09	CHECK	4696	$134.00	$3,701.35	0000000062301034Т9
09-10	CHECK	4695	$60.08	$3,641.27	0000000064303398I4
09-10	CHECK	4704	$40.00	$3,561.27	0000000062307083В0
09-10	CHECK	4706	$16.00	$3,545.27	0000000062307413Э7
09-10	CHECK	4708	$60.00	$3,485.27	0000000064304684I0
09-10	CHECK	4709	$265.00	$3,220.27	0000000064304721I5
09-16	BANK ONE ATM WITHDRA		$20.00	$3,200.27	0000000000240008Т7
09-16	BANK ONE ATM WITHDRA		$60.00	$3,140.27	0000000000240086О5
09-16	BANK ONE ATM WITHDRA		$100.00	$3,040.27	0000000000240061Т2
09-16	BANK ONE CARD PURCHA		$141.10	$2,899.17	0000000000241625I4
09-16	CHECK	4714	$1,800.00	$1,099.17	0000000062303283В8
09-16	CHECK	4699	$95.00	$1,204.17	0000000062302298Б5
09-16	CHECK	4700	$330.15	$874.02	0000000062302263Ц5
09-16	CHECK	4701	$330.00	$544.02	0000000062302263Ч4
09-16	CHECK	4711	$19.75	$524.27	0000000088300425Б5
09-17	DEPOSIT		$201.64	$725.91	0000000064304695О7
09-17	CHECK	4716	$40.94	$684.97	0000000063308258Б1
09-18	BANK ONE CARD PURCHA		$25.51	$659.46	0000000000240474Б1
09-18	CHECK	4710	$36.48	$622.98	0000000063300135Б5
09-18	CHECK	4715	$60.00	$562.98	0000000064306890Ч3
09-19	BANK ONE ATM WITHDRA		$100.00	$462.98	0000000000240088Т5
09-19	CHECK	4717	$50.00	$412.98	0000000063303033Ъ7
09-20	BANK ONE ATM WITHDRA		$60.00	$352.98	0000000000240068Э3
09-23	DEPOSIT		$50.00	$402.98	0000000063308303Э0
09-23	BANK ONE CARD PURCHA		$21.00	$381.98	0000000000241589Б5
09-24	BANK ONE CARD PURCHA		$31.70	$350.28	0000000000240873Ъ2
09-24	BANK ONE CARD PURCHA		$49.97	$300.31	0000000000243608Б9
09-24	CHECK	4705	$80.25	$220.06	0000000062304700О0
09-24	INTEREST PAYMENT		$.44	$220.50	0000000000000000О0
09-24	SERVICE FEE		$12.00	$208.50	0000000000000000О0

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20030923 THW 1 0 16 13735

Bank One, NA
Louisiana Market
P.O. Box 92102
Bedford , TX 76095-2102

Acct # [redacted]

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G THOMAS PORTEOUS JR
OR MRS G THOMAS PORTEOUS
4901 BETREY DR
METAIRIE LA 70002-1426

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INTEREST ONE CHECKING
Account number [redacted]

	Amount
Interest earned this statement period	$0.39
Annual Percentage Yield Earned this statement period	0.10%
Interest paid this year	$3.96
Beginning balance	$927.18
Checks paid	- 7,600.73
Other withdrawals	- 2,666.23
Deposits	+ 9,754.86
Balance as of Sep 23	$415.08

Checks paid

Number	Amount	Date paid	Number	Amount	Date paid
3237	20.00	09-09	3252	35.00	09-12
3237*	25.48	09-25	3253	226.00	09-05
3238	25.00	09-04	3254	100.00	09-10
3239	336.81	09-10	3255	60.00	09-10
3240	300.00	09-03	3256	70.00	09-05
3241	935.00	09-03	3257	14.00	09-10
3242	1,457.77	09-03	3259*	38.91	09-15
3243	500.00	09-08	3260	34.14	09-11
3244	106.29	09-08	3261	60.00	09-09
3245	61.39	09-08	3262	41.87	09-10
3246	65.00	09-08	3263	814.62	09-15
3247	400.00	09-10	3264	26.41	09-15
3248	20.00	09-09	3265	28.00	09-22
3249	57.67	09-09	3290*	1,600.00	09-16
3250	46.06	09-09	5047*	20.00	09-09
3251	100.00	09-10	Total	7,600.73	

* Checks may not appear on your bank statement because they have not yet cleared, appeared on a previous statement, or cleared as an electronic withdrawal and will be listed under the "other withdrawals" section of your statement. Some Online Bill Payment transactions are assigned six-digit check numbers and appear under "checks paid" causing non-sequential check numbers.

Other withdrawals including charges and fees

Date	Description	
09-25	Non BA One Withdrawal Fee	1.50
09-25	Non-Bank One ATM Withdraw 007364 09/244 Canal Harrahs 11 New Orleans LA	104.00

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20030923

YNN 1 0 16 13736

O THOMAS PORTEOUS JR

Acct # [redacted]
Aug 23 through Sep 23, 2003
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Other withdrawals including charges and fees

Date	Description				
08-25	Bank One ATM Withdrawal Metairie LA	003338	08/233420	Severn Ave.	60.00
08-26	Card Purchase With Pin LA	810000	08/25Breaux Mart #4	Metairie	25.34
08-26	The One Card Purchase		08/24Driftwood Spur	Kenner LA	11.02
08-27	State Farm Ro 22Insurance	0392761822	PPD		161.27
08-29	Card Purchase With Pin Metairi9270749 LA	229311	08/28Sav-A-Cent		13.15
09-02	Non Bk One ATM Inquiry Fee				1.50
09-02	Bank One ATM Withdrawal Metairie LA	004265	09/293420	Severn Ave.	220.00
09-02	Non Bk One Withdrawal Fee				1.50
09-02	Non-Bank One ATM Withdraw MS	242854	09/303215	West Beach Gulfport	202.00
08-02	Non Bk One Withdrawal Fee				1.50
09-02	Non-Bank One ATM Withdraw MS	243882	09/313215	West Beach Gulfport	202.00
09-02	The One Card Purchase Metairie LA		08/30Discount	26653345	22.25
09-02	The One Card Purchase Marrero LA		08/29Westside Orthopaedic Ct		15.00
09-02	The One Card Purchase Orleans LA		08/23Des Schulerhaus New		11.97
09-02	The One Card Purchase Metairie LA		08/29Discount	26653345	7.04
09-03	Card Purchase With Pin Metairi9270507 LA	241311	09/02Sav-A-Cent		222.86
09-03	Card Purchase With Pin Metairi0165997 LA	447845	09/02Cns Toys R Us		25.00
09-04	The One Card Purchase Metairie LA		09/02Discount	26653345	26.00
09-04	The One Card Purchase 5048298611 LA		09/02Amy'S Hallmark		16.15
09-05	Card Purchase With Pin LA	259935	09/04Dillard'S # 28	Metairie	27.29
09-08	Bank One ATM Withdrawal Metairie LA	001188	09/083420	Severn Ave.	80.00
09-08	Card Purchase With Pin	000223	09/07Albertsons #27	Kenner LA	56.67
09-08	Bank One ATM Withdrawal Metairie LA	005210	09/083420	Severn Ave.	40.00
09-08	The One Card Purchase Metairie LA		09/05Discount	26653345	27.01
09-09	Card Purchase With Pin LA	890000	09/08Dorignac Food	Metairie	13.16
09-12	Lord And Taylor Acct Pymt	3258		Axp	30.00
09-12	Card Purchase With Pin LA	900080	09/11Breaux Mart #4	Metairie	12.36

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20030923
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Acct # [redacted]
Aug 23 through Sep 23, 2003
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Other withdrawals including charges and fees

Date	Description			Amount
09-15	Business Bankingdcpayment	005031500048809	PPD	497.76
09-15	Card Purchase With Pin Metairi922116 LA	102411 09/14Sou Say A Cost		120.64
09-15	Non Bk One Withdrawal Fee			1.50
09-15	Non-Bank One ATM Withdraw Orleans LA	009014 09/144 Canal St Harrahs New		104.00
09-15	Bank One ATM Withdrawal Metairie LA	002063 09/123420 Severn Ave.		100.00
09-15	Non Bk One Withdrawal Fee			1.50
09-15	Non-Bank One ATM Withdraw Orleans LA	003745 09/144 Canal Harrahs 10 New		64.00
09-15	The One Card Purchase Metairie LA	09/12Discount 26653345		24.00
09-15	The One Card Purchase	09/13Corkys Bbq Metairie LA		13.67
09-15	The One Card Purchase Metairie LA	09/12Sav-A-Center #076		5.79
09-15	The One Card Purchase Metairie LA	09/11Rjgh Cafe & Fountain DE		3.26
09-16	Bank One ATM Withdrawal Metairie LA	002624 09/153420 Severn Ave.		60.00
09-22	Bank One ATM Withdrawal Metairie LA	003403 09/193420 Severn Ave.		100.00
09-22	The One Card Purchase Metairie LA	09/20Discount 26653345		20.00
09-23	Service Fee			12.00
				2,666.23

Fees and charges When you maintain a minimum Interest One Checking balance of $1,500.00 or a combined minimum balance of $5,000.00 in linked qualifying checking and savings accounts or a combined minimum balance of $15,000.00 in qualifying linked deposit and credit accounts each day during the statement period, your Interest One Checking monthly service fee is waived. On 08/25/03, your Interest One Checking balance was $927.00, combined minimum balance in linked qualifying deposit accounts was $927.00, and combined minimum balance in qualifying linked deposit and credit accounts was $927.00.

Deposits and other additions

Date	Description			Amount
09-03	Ustr Treas 310 Fed Salary	[redacted]	PPD	9,083.02
09-05	Deposit			344.56
09-17	Deposit			326.91
09-23	Interest Payment			0.39
				9,754.88

Account Daily Balance
Beginning Balance $927.16

Date	Description	Amount	Balance	Batch seq no
08-25	NON BK ONE WITHDRAWA	$1.50	$925.66	0000000000250073640
08-25	NON-BANK ONE ATM WIT	$104.00	$821.66	0000000000240073640
08-25	BANK ONE ATM WITHDRA	$60.00	$761.66	0000000000240033330
08-25	CHECK 3237	$25.46	$736.20	0000000062301782260

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THE 1 0 16 13738

G THOMAS PORTEOUS JR

Acct # [redacted]
Aug 23 through Sep 23, 2003
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Account Daily Balance
Beginning Balance $927.18

Date	Description	Amount	Balance	Batch seq no
08-26	CARD PURCHASE WITH P	$25.94	$710.26	000000000026810000
08-26	THE ONE CARD PURCHAS	$11.02	$699.24	000000000024046347
08-27	STATE FARM RO 22IWGU	$161.27	$537.97	000000000026471860
08-28	CARD PURCHASE WITH P	$13.15	$524.82	000000000024229311
09-02	USCT TREAS 310 FED	$9,083.02	$9,607.84	000000036000191059
09-02	NON BK ONE ATM TRQU3	$1.50	$9,606.34	000000000025243891
09-02	BANK ONE ATM WITHDRA	$220.00	$9,386.34	000000000024004265
09-02	NON BK ONE WITHDRAWA	$1.50	$9,384.84	000000000025243884
09-02	NON-BANK ONE ATM WIT	$202.00	$9,182.84	000000000025242854
09-02	NON BK ONE WITHDRAWA	$1.50	$9,181.34	000000000025243892
09-02	NON-BANK ONE ATM WIT	$102.00	$9,079.34	000000000024243892
09-02	THE ONE CARD PURCHAS	$22.25	$9,057.09	000000000024244431
09-02	THE ONE CARD PURCHAS	$15.00	$9,042.09	000000000024077017
09-01	THE ONE CARD PURCHAS	$11.97	$9,030.12	000000000024009403
09-02	THE ONE CARD PURCHAS	$7.04	$9,023.08	000000000024077019
09-03	CHECK 3242	$1,457.77	$7,565.31	000000006230471896
09-03	CHECK 3241	$935.00	$6,630.31	000000006230471897
09-03	CHECK 3240	$300.00	$6,330.31	000000006430345978
09-03	CARD PURCHASE WITH P	$222.86	$6,107.45	000000000024241931
09-03	CARD PURCHASE WITH P	$25.00	$6,082.45	000000000024447843
09-04	THE ONE CARD PURCHAS	$26.00	$6,056.45	000000000024041361
09-04	CHECK 3238	$25.00	$6,031.45	000000008330825921
09-04	THE ONE CARD PURCHAS	$26.15	$6,015.30	000000000024041362
09-05	DEPOSIT	$344.54	$6,359.84	000000006330340401
09-05	CHECK 3252	$226.00	$6,133.84	000000006230215966
09-05	CHECK 3256	$70.00	$6,063.84	000000004330287690
09-05	CARD PURCHASE WITH P	$27.19	$6,036.65	000000000024259835
09-08	CHECK 3243	$500.00	$5,536.65	000000006230457722
09-08	CHECK 3244	$104.28	$5,432.36	000000006430879488
09-08	BANK ONE ATM WITHDRA	$80.00	$5,352.36	000000000024002188
09-08	CHECK 3246	$65.00	$5,287.36	000000006230352603
09-09	CHECK 3245	$61.30	$5,226.06	000000006430979050
09-08	CHECK 3249	$57.67	$5,168.39	000000006330588382
09-08	CARD PURCHASE WITH P	$56.67	$5,111.72	000000000024009223
09-08	BANK ONE ATM WITHDRA	$40.00	$5,071.72	000000000024003210
09-08	THE ONE CARD PURCHAS	$27.01	$5,044.71	000000000024082868
09-08	CARD PURCHASE WITH P	$13.14	$5,031.55	000000000024890000
09-09	CHECK 3261	$60.00	$4,971.55	000000006230899977
09-09	CHECK 3250	$46.06	$4,925.49	000000006430279064
09-09	CHECK 3247	$20.00	$4,905.49	000000006430364240
09-09	CHECK 3967	$20.00	$4,885.49	000000006430364241
09-09	CHECK 3248	$20.00	$4,865.49	000000006330393151
09-10	CHECK 3247	$400.00	$4,465.49	000000006230315360
09-10	CHECK 3239	$234.81	$4,230.68	000000006230369782
09-10	CHECK 3251	$100.00	$4,030.68	000000006230314924
09-10	CHECK 3254	$100.00	$3,930.68	000000006230314925
09-10	CHECK 3255	$60.00	$3,870.68	000000006430632893
09-10	CHECK 3262	$43.87	$3,826.81	000000006330718026
09-10	CHECK 3257	$14.00	$3,814.81	000000006330818860
09-11	CHECK 3260	$14.14	$3,800.67	000000006430703784
09-12	CHECK 3252	$35.00	$3,765.67	000000006330210658
09-12	LORD AND TAYLOR ACCT	$30.00	$3,735.67	000000002805458785
09-12	CARD PURCHASE WITH P	$12.36	$3,723.31	000000000024900000
09-15	BUSINESS BANKINGCPA	$497.74	$3,225.57	000000006330089280
09-15	CARD PURCHASE WITH P	$120.64	$3,104.93	000000000024102411
09-15	NON BK ONE WITHDRAWA	$1.50	$3,103.43	000000000025009014
09-15	NON-BANK ONE ATM WIT	$104.00	$2,999.43	000000000024009014
09-15	BANK ONE ATM WITHDRA	$100.00	$2,899.43	000000000024002063
09-15	NON BK ONE WITHDRAWA	$1.50	$2,897.93	000000000025002745
09-15	NON-BANK ONE ATM WIT	$64.00	$2,833.93	000000000024002745
09-15	CHECK 3259	$38.31	$2,795.62	000000006230332324
09-15	CHECK 3264	$26.41	$2,769.21	000000001330592032
09-15	THE ONE CARD PURCHAS	$24.00	$2,745.21	000000000024054385
09-15	THE ONE CARD PURCHAS	$13.67	$2,731.54	000000000024135679
09-15	THE ONE CARD PURCHAS	$5.79	$2,725.75	000000000024056206
09-15	THE ONE CARD PURCHAS	$3.26	$2,722.49	000000000024005649
09-18	CHECK 3240	$1,600.00	$1,122.49	000000006330418740
09-16	CHECK 3263	$814.62	$307.87	000000000330442472
09-16	BANK ONE ATM WITHDRA	$60.00	$247.87	000000000024002624
09-17	DEPOSIT	$326.91	$574.78	000000006330634603
09-22	BANK ONE ATM WITHDRA	$100.00	$474.78	000000000024003403
09-22	CHECK 3265	$28.00	$446.78	000000006330553790
09-22	THE ONE CARD PURCHAS	$20.09	$426.69	000000000024145244

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THE 1 0 16 13739

G THOMAS PORTEOUS JR

Acct # [redacted]
Aug 23 through Sep 23, 2003
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Account Daily Balance
Beginning Balance $927.10

Date	Description	Amount	Balance	Batch seq no
09-23	INTEREST PAYMENT	$.39	$427.08	0000000000000000000
09-23	SERVICE FEE	$12.00	$415.08	0000000000000000000

USE THE ONE(R) CARD TO SHOP ONLINE AND OVER THE PHONE.
IT'S AS FAST AND EASY AS A CREDIT CARD, BUT THE AMOUNT OF
YOUR PURCHASE IS DEDUCTED FROM YOUR CHECKING ACCOUNT. AND,
YOU'RE PROTECTED BY BANK ONE AGAINST MOST UNAUTHORIZED USE

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Bank One, NA
Louisiana Market
P.O. BOX 92102
Bedford , TX 76095-2102

1 31 16 36906

Acct # [redacted]

S THOMAS PORTEOUS JR
OR MRS G THOMAS PORTEOUS
4801 METRET DR
METAIRIE LA 70002-1426

May 23 through Jun 24, 2002

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A REMINDER FOR SAVINGS AND BUSINESS SAVINGS ACCOUNTS. 6 MONTHLY WITHDRAWALS ARE PROVIDED EACH STATEMENT PERIOD WITH NO FEE. AFTER 6 CUSTOMER INITIATED WITHDRAWALS (SUCH AS TELEPHONE TRANSFERS, INTERNET TRANSFERS AND LOAN PAYMENT TRANSFERS) A $3 PER WITHDRAWAL FEE WILL BE ASSESSED TO YOUR ACCOUNT, PER MONTHLY CYCLE. FOR AUTOMATED ACCOUNT INFORMATION, PAYMENTS, TRANSFERS AND TO CHANGE YOUR ACCOUNT MAILING ADDRESS, CALL 1-800-777-8837 ANYTIME OR VISIT WWW.BANKONE.COM. TELEPHONE BANKERS ARE AVAILABLE DURING EXTENDED BUSINESS HOURS. FOR TEXT TELEPHONES (TDD/TTY), CALL 1-888-663-4833. PARA ESPANOL, LLAME AL 1-888-226-3663.

INTEREST ONE CHECKING
Account number [redacted]

	Amount
Interest earned this statement period	$0.94
Annual Percentage Yield Earned this statement period	0.39%
Interest paid this year	$4.03
Beginning balance	$1,120.91
Checks paid	- 7,117.67
Other withdrawals	- 2,594.20
Deposits	+ 9,348.27
Balance as of Jun 24	$857.31

Checks paid

Number	Amount	Date paid	Number	Amount	Date paid
4576	340.00	05-24	4592	100.00	06-24
4577	60.00	06-10	4593	53.00	06-24
4578	25.00	06-06	4595*	10.00	06-21
4579	10.00	06-12	4605*	50.00	06-04
4580	50.95	06-04	4606	25.00	06-11
4581	50.00	06-10	4607	35.00	05-24
4582	64.75	06-10	4608	60.00	06-04
4583	169.82	06-07	4609	140.00	06-04
4584	62.95	06-07	4610	5.10	06-04
4585	25.00	06-07	4611	8.00	06-04
4586	146.82	06-10	4612	330.00	06-10
4587	600.00	06-05	4613	330.15	06-10
4588	3,453.10	06-05	4615*	35.00	06-19
4589	300.00	06-10	4616	23.03	06-18
4590	300.00	06-10	4631*	650.00	06-07
4591	1,605.00	06-13	Total		7,117.67

* Checks not listed were shown on a previous statement or had not yet cleared as of 06-24-02.

Other withdrawals including charges and fees

Date	Description		
05-23	Bank One Card Purchase	05/21World Deli, Inc. Metairie LA	14.95
05-23	Bank One Card Purchase	05/21Discount 26653345	
	Metairie LA		22.20
05-23	Pulse Withdrawal Fee		1.50

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G THOMAS PORTEOUS JR

Acct # [redacted]
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Other withdrawals including charges and fees

Date	Description				Amount
05-23	Pulse Withdrawal Orleans LA	008484	05/234	Canal St Harrahs New	124.00
05-23	Bank One ATM Withdrawal	007082	05/223420	Severn Ave. Metairie LA	180.00
05-29	State Farm Ro 22Insurance	03927619Z2		PPD	156.13
05-30	Bank One Card Purchase Metairie LA		05/28Discount	26653345	8.01
06-03	Bank One ATM Withdrawal	008682	05/313420	Severn Ave. Metairie LA	20.00
06-03	Bank One Card Purchase LA	201821	06/01Sou Sav-A-Cent	Metairi920565	20.96
06-03	Bank One Card Purchase	031716	06/01Breaux Mart #4	Metairie LA	46.23
06-03	Bank One ATM Withdrawal LA	009787	06/011400	Veterans Blvd Metairie	100.00
06-03	Pulse Withdrawal Fee				1.50
06-03	Pulse Withdrawal Orleans LA	000390	06/024	Canal St Harrahs New	184.00
06-10	Bank One 552 Loan Payst	0003600020357Z		PPD	493.95
06-11	Bank One Card Purchase	062111	06/10Breaux Mart #4	Metairie LA	38.54
06-12	Bank One ATM Withdrawal	000537	06/123420	Severn Ave. Metairie LA	40.00
06-13	Pulse Withdrawal Fee				1.50
06-13	Pulse Withdrawal LA	460508	06/135050	Williams Blvd . Kenner	103.00
06-14	Bank One Card Purchase		06/12Our Dollar Rut	Metairie LA	7.61
06-14	Bank One ATM Withdrawal	000978	06/143420	Severn Ave. Metairie LA	100.00
06-17	Bank One Card Purchase Orleans LA		06/13Shell No.21765853064	New	10.00
06-17	Bank One Card Purchase Metairie LA		06/14Mailing & Things	Postne	13.98
06-17	Bank One Card Purchase Metairie LA		06/14Jcpenney CO	0549	20.00
06-17	Bank One ATM Withdrawal LA	009021	06/163783	Veterans Blvd Metairie	100.00
06-17	Bank One Card Purchase	295811	06/15Sou Sav-A-Cent	Metairi920763	143.36
06-18	Pulse Withdrawal Fee				1.50
06-18	Pulse Withdrawal LA	455269	06/175050	Williams Blvd . Kenner	103.00
06-18	Pulse Withdrawal Fee				1.50
06-19	Pulse Withdrawal LA	455293	06/185050	Williams Blvd . Kenner	103.00
06-19	Bank One Card Purchase Metairie LA		06/17Discount	26653345	22.00
06-20	Bank One Card Purchase LA	042611	06/20Sou Sav-A-Cent	Metairi920763	43.20
06-21	Bank One ATM Withdrawal LA	002986	06/204545	Veterans Blvd Metairie	100.00

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G THOMAS PONTEOUS JR

Acct # [redacted]
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Other withdrawals including charges and fees

Date	Description				
06-24	Bank One Card Purchase Metairie LA		06/21Jcpenney CO	0549	51.08
06-24	Bank One ATM Withdrawal	002690	06/2223420 Severn Ave. Metairie LA		100.00
06-24	Pulse Withdrawal Fee				1.50
06-24	Pulse Withdrawal	004032	06/234 Canal St Harrahs New Orleans LA		204.00
06-24	Service Fee				12.00
					2,694.20

Fees and charges When you maintain a minimum Interest One Checking balance of $1,500.00 or a combined minimum balance of $5,000.00 in linked qualifying checking and savings accounts or a combined minimum balance of $15,000.00 in qualifying linked deposit and credit accounts each day during the statement period, your Interest One Checking monthly service fee is waived. On 05/23/02, your Interest One Checking balance was $1,120.00, combined minimum balance in linked qualifying deposit accounts was $1,120.00, and combined minimum balance in qualifying linked deposit and credit accounts was $1,120.00.

Deposits and other additions

Date	Description			
05-31	Usc Treas 310 Fed Salary [redacted]	PPD		7,886.09
06-03	Deposit			60.00
06-07	Credit Due To One Card/POS Dispute			17.95
06-07	Credit Due To One Card/POS Dispute			40.23
06-07	Credit Due To One Card/POS Dispute			98.80
06-07	Interest Refund			0.35
06-13	Deposit			430.00
06-17	Deposit			72.00
06-17	Deposit			200.00
06-19	Deposit			792.26
06-24	Interest Payment			0.59
				9,548.27

Account Daily Balance
Beginning Balance $1,120.91

Date	Description	Amount	Balance	Batch seq no
05-23	BANK ONE CARD PURCHA	$14.95	$1,105.96	0000000000024049511
05-23	BANK ONE CARD PURCHA	$22.20	$1,083.76	0000000000024049510
05-23	PULSE WITHDRAWAL FEE	$1.50	$1,082.26	0000000000025008484
05-23	PULSE WITHDRAWAL	$124.00	$958.26	0000000000024008494
05-23	BANK ONE ATM WITHDRA	$180.00	$778.26	0000000000024007882
05-24	CHECK 4576	$340.00	$438.26	0000000553062219464
05-24	CHECK 4607	$35.00	$403.26	0000000550620748040
05-29	STATE FARM RO 22IWSU	$156.13	$247.13	0000000000033198781
05-30	BANK ONE CARD PURCHA	$8.01	$239.12	0000000000024049692
05-31	USC TREAS 310 FED	$7,886.09	$8,125.21	0000000360075157141
06-03	DEPOSIT	$60.00	$8,185.21	0000000550623278348
06-03	BANK ONE ATM WITHDRA	$20.00	$8,165.21	0000000000024009692
06-03	BANK ONE CARD PURCHA	$20.96	$8,144.25	0000000000024201811
06-03	BANK ONE CARD PURCHA	$46.23	$8,098.02	0000000000024091716
06-03	BANK ONE ATM WITHDRA	$100.00	$7,998.02	0000000000024009787
06-03	PULSE WITHDRAWAL FEE	$1.50	$7,996.52	0000000000025000390
06-03	PULSE WITHDRAWAL	$184.00	$7,812.52	0000000000024000390
06-04	CHECK 4580	$50.95	$7,761.57	0000000550629151191

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G THOMAS PORTEOUS JR

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Account Daily Balance
Beginning Balance $1,120.91

Date	Description		Amount	Balance	Batch seq no
05-04	CHECK	4605	$50.00	$7,711.57	0000000550647325B4
05-04	CHECK	4608	$60.00	$7,651.57	0000000550636B4573
05-04	CHECK	4609	$140.00	$7,511.57	0000000550648079Z7
05-04	CHECK	4610	$5.10	$7,506.47	0000000550629132Z4
05-04	CHECK	4611	$8.00	$7,498.47	0000000550648017S5
05-05	CHECK	4587	$600.00	$6,898.47	0000000550630902Z6
05-05	CHECK	4588	$1,453.10	$5,445.37	0000000550630920Z7
05-06	CHECK	4578	$25.00	$5,420.37	0000000550623171Z1
05-07	CREDIT DUE TO OBE CA		$17.95	$5,438.32	0000000000000000000
05-07	CREDIT DUE TO OBE CA		$40.23	$5,478.55	0000000000000000000
05-07	CREDIT DUE TO OBE CA		$49.80	$5,527.35	0000000000000000000
05-07	INTEREST REFUND		$.35	$5,527.70	0000000000000000000
05-07	CHECK	4631	$650.00	$4,877.70	0000000550638319B6
05-07	CHECK	4583	$169.82	$4,707.88	0000000550625047S9
05-07	CHECK	4584	$62.95	$4,644.93	0000000550636490S4
05-07	CHECK	4585	$25.00	$4,619.93	0000000550636750I2
05-10	BANK ONE 552	LOAN	$493.95	$4,125.98	0000000000036992166
05-10	CHECK	4577	$60.00	$4,065.98	0000000550644844Z2
05-10	CHECK	4581	$50.00	$4,015.98	0000000550649B6405
05-10	CHECK	4582	$64.75	$3,951.23	0000000551631212S1
05-10	CHECK	4586	$146.82	$3,804.41	0000000550630994Z4
05-10	CHECK	4589	$300.00	$3,504.41	0000000550630994Z3
05-10	CHECK	4590	$300.00	$3,204.41	0000000551630824I1
05-10	CHECK	4612	$330.00	$2,874.41	0000000550628205Z2
05-10	CHECK	4613	$330.15	$2,544.26	0000000550628205Z3
05-11	BANK ONE CARD PURCHA		$38.54	$2,505.72	0000000000024062111
05-11	CHECK	4606	$25.00	$2,480.72	0000000550622260B3
05-12	BANK ONE ATM WITHDRA		$40.00	$2,440.72	0000000000024000637
05-12	CHECK	4579	$10.00	$2,430.72	0000000550623634909
05-13	DEPOSIT		$430.00	$2,860.72	0000000550628599776
05-13	PULSE WITHDRAWAL FEE		$1.50	$2,859.22	0000000000024460508
05-13	PULSE WITHDRAWAL		$103.00	$2,756.22	0000000000024460509
05-13	CHECK	4591	$1,605.00	$1,151.22	0000000550643645A7
05-14	BANK ONE CARD PURCHA		$7.61	$1,143.61	0000000000024051279
05-14	BANK ONE ATM WITHDRA		$100.00	$1,043.61	0000000000024000978
05-17	DEPOSIT		$72.00	$1,115.61	0000000550630214A3
05-17	DEPOSIT		$200.00	$1,315.61	0000000550630314G1
05-17	BANK ONE CARD PURCHA		$10.00	$1,305.61	0000000000024167878
05-17	BANK ONE CARD PURCHA		$13.98	$1,291.63	0000000000024167880
05-17	BANK ONE CARD PURCHA		$20.00	$1,271.63	0000000000024167879
05-17	BANK ONE ATM WITHDRA		$100.00	$1,171.63	0000000000024009821
05-17	BANK ONE CARD PURCHA		$143.36	$1,028.27	0000000000024295811
05-18	PULSE WITHDRAWAL FEE		$1.50	$1,026.77	0000000000025455268
05-18	PULSE WITHDRAWAL		$103.00	$923.77	0000000000024455269
05-18	PULSE WITHDRAWAL FEE		$1.50	$922.27	0000000000025455293
05-18	PULSE WITHDRAWAL		$103.00	$819.27	0000000000024455293
05-18	CHECK	4616	$23.03	$796.24	0000005550643576Z8
05-19	DEPOSIT		$792.26	$1,588.50	0000005550646551Z0
05-19	BANK ONE CARD PURCHA		$22.00	$1,566.50	0000000000024049732
05-19	CHECK	4615	$35.00	$1,531.50	0000005550645692Z1
05-20	BANK ONE CARD PURCHA		$43.20	$1,488.30	0000000000024062611
05-21	BANK ONE ATM WITHDRA		$100.00	$1,388.30	0000000000024002986
05-21	CHECK	4595	$10.00	$1,378.30	0000000550631305A6
05-24	BANK ONE CARD PURCHA		$51.08	$1,327.22	0000000000024154830
05-24	BANK ONE ATM WITHDRA		$100.00	$1,227.22	0000000000024002490
05-24	PULSE WITHDRAWAL FEE		$1.50	$1,225.72	0000000000025004032
05-24	PULSE WITHDRAWAL		$204.00	$1,021.72	0000000000024004032
05-24	CHECK	4592	$100.00	$921.72	0000000550632786J6
05-24	CHECK	4593	$53.00	$868.72	0000005550645453K3
05-24	INTEREST PAYMENT		$.59	$869.31	0000000000000000000
05-24	SERVICE FEE		$12.00	$857.31	0000000000000000000

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SIMPLIFY YOUR LIFE AND SAVE TIME WITH DIRECT DEPOSIT, WHICH AUTOMATICALLY DEPOSITS YOUR PAYROLL CHECK OR FEDERAL BENEFIT CHECKS INTO YOUR CHECKING ACCOUNT. IT'S SAFE, SIMPLE AND CONVENIENT. TO ENROLL, CONTACT YOUR EMPLOYER'S PAYROLL DEPARTMENT, OR, IF YOU RECEIVE FEDERAL BENEFITS, LIKE SOCIAL SECURITY, VISIT A BANK ONE

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Bank One, NA
Louisiana Market
P.O. Box 92102
Bedford , TX 76095-2102

1 29 16 35103

Acct # [redacted]

G THOMAS PONTEOUS JR
OR MRS G THOMAS PONTEOUS
4801 BETREY DR
METAIRIE LA 70002-1426

Jun 25 through Jul 23, 2002

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FOR AUTOMATED ACCOUNT INFORMATION, PAYMENTS, TRANSFERS AND TO CHANGE YOUR ACCOUNT MAILING ADDRESS, CALL 1-800-777-8837 ANYTIME OR VISIT WWW.BANKONE.COM. TELEPHONE BANKERS ARE AVAILABLE DURING EXTENDED BUSINESS HOURS. FOR TEXT TELEPHONES (TDD/TTY), CALL 1-888-663-4833. PARA ESPANOL, LLAME AL 1-888-225-5663.

INTEREST ONE CHECKING
Account number [redacted]

	Amount
Interest earned this statement period	$0.52
Annual Percentage Yield Earned this statement period	0.24%
Interest paid this year	$4.55
Beginning balance	$857.31
Checks paid	- 6,328.51
Other withdrawals	- 2,332.21
Deposits	+ 8,135.18
Balance as of Jul 23	$331.77

Checks paid

Number	Amount	Date paid	Number	Amount	Date paid
4596	300.00	06-26	4634	1,459.10	07-10
4597	31.95	06-28	4635	20.00	07-10
4598	300.00	07-08	4636	70.00	07-10
4599	142.00	07-02	4637	44.02	07-08
4600	51.00	07-02	4638	300.00	07-08
4614*	19.00	06-26	4639	50.00	07-08
4617*	330.00	07-15	4640	73.15	07-08
4618	5.10	07-09	4641	200.00	07-02
4619	317.00	07-10	4642	60.00	07-03
4620	50.00	07-10	4643	30.68	07-11
4621	35.30	07-16	4644	200.00	07-05
4622	21.00	07-15	4645	140.75	07-11
4624*	7.50	07-23	4646	330.15	07-15
4632*	25.00	07-08	4647	1,600.00	07-09
4633	126.70	07-08	Total	6,328.51	

* Checks not listed were shown on a previous statement or had not yet cleared as of 07-23-02.

Other withdrawals including charges and fees

Date	Description		
06-26	Bank One Card Purchase LA	040848 06/25Breaux Mart #4 Metairie	50.32
06-27	State Farm Ro 22Insurance	03927618ZZ PPD	156.13
07-01	Bank One ATM Withdrawal Metairie LA	080020 07/013420 Severn Ave.	100.00
07-02	Bank One Card Purchase	06/30Trade Secret Kenner LA	32.58
07-03	Bank One Card Purchase Metairie LA	07/01Circle K 00424341	19.00

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1 29 16 38104

G THOMAS PORTEOUS JR

Acct # [redacted]
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Other withdrawals including charges and fees

Date	Description				
07-03	Bank One Card Purchase Metairie LA		07/01Discount	26653345	22.00
07-03	Bank One ATM Withdrawal Metairie LA	004443	07/033420 Severn Ave.		100.00
07-05	Pulse Withdrawal Fee				1.50
07-05	Pulse Withdrawal MS	853333	07/043215 West Beach Gulfport		202.00
07-08	Bank One Card Purchase		07/06Smartstyle Harahan LA		35.89
07-08	Bank One ATM Withdrawal Orleans LA	004298	07/08601 Poydras St. New		100.00
07-08	Bank One Card Purchase Harahan1953 LA	601411	07/06Wal Wal-Mart S		182.73
07-09	Bank One 552 Loan Paymt	000340000203579	PPD		493.95
07-10	Pulse Withdrawal Fee				1.50
07-10	Pulse Withdrawal Orleans LA	006563	07/104 Canal St Harrahs New		204.00
07-12	Bank One Card Purchase		07/10Danny & Clyd Metairie LA		23.01
07-12	Bank One Card Purchase LA	062466	07/11Breaux Mart 84 Metairie		93.32
07-15	Bank One Card Purchase Metairi920763 LA	243811	07/15Sos Rev-A-Cent		41.28
07-17	Bank One ATM Withdrawal Metairie LA	006616	07/163420 Severn Ave.		100.00
07-18	Bank One Card Purchase Metairie LA		07/16Discount	26653345	13.00
07-22	Bank One Card Purchase Metairie LA		07/18Discount	26653345	24.50
07-22	Bank One ATM Withdrawal Metairie LA	006663	07/223420 Severn Ave.		100.00
07-23	Bank One Card Purchase		07/21Danny & Clyd Metairie LA		20.00
07-23	Pulse Withdrawal Fee				1.50
07-23	Pulse Withdrawal MS	037531	07/223215 West Beach Gulfport		202.00
07-23	Service Fee				12.00
					2,332.21

Fees and charges When you maintain a minimum Interest One Checking balance of $1,500.00 or a combined minimum balance of $5,000.00 in linked qualifying checking and savings accounts or a combined minimum balance of $15,000.00 in qualifying linked deposit and credit accounts each day during the statement period, your Interest One Checking monthly service fee is waived. On 06/25/02, your Interest One Checking balance was $857.00, combined minimum balance in linked qualifying deposit accounts was $857.00, and combined minimum balance in qualifying linked deposit and credit accounts was $857.00.

Deposits and other additions

Date	Description			
07-01	Usc Treas 310 Fed Salary	[redacted]	PPD	7,934.66

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1 29 16 35105

G THOMAS PORTEOUS JR

Acct # [redacted]
Jun 25 through Jul 23, 2002
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Deposits and other additions

Date	Description	
07-11	Deposit	200.00
07-23	Interest Payment	0.52
		8,135.10

Account Daily Balance
Beginning Balance $857.31

Date	Description		Amount	Balance	Batch seq no
06-26	BANK ONE CARD PURCHA		$50.32	$806.99	0000000000024044848
06-26	CHECK	4596	$300.00	$506.99	0000000550647505S3
06-26	CHECK	4614	$19.00	$487.99	0000000550634354Z2
06-27	STATE FARM RO 221BSU		$156.13	$331.86	0000000026897187Z
06-28	CHECK	4597	$31.96	$299.90	0000000530637314?0
07-01	USC TREAS 310 FED		$7,934.66	$8,234.56	0000000360001502Z0
07-01	BANK ONE ATM WITHDRA		$100.00	$8,134.56	0000000000240040Z0
07-02	BANK ONE CARD PURCHA		$32.58	$8,101.98	0000000000240570?5
07-02	CHECK	4599	$142.00	$7,959.98	0000000530637466?6
07-02	CHECK	4600	$51.00	$7,908.98	0000000550637563B4
07-02	CHECK	4641	$200.00	$7,708.98	0000000550620667A6
07-03	BANK ONE CARD PURCHA		$19.00	$7,689.98	0000000000240530S3
07-03	BANK ONE CARD PURCHA		$22.00	$7,667.98	0000000000240530S4
07-03	BANK ONE ATM WITHDRA		$100.00	$7,567.98	0000000000240044A3
07-03	CHECK	4642	$60.00	$7,507.98	0000000550630675S6
07-05	PULSE WITHDRAWAL FEE		$1.50	$7,506.48	0000000000258533S3
07-05	PULSE WITHDRAWAL		$202.00	$7,304.48	0000000000248533S3
07-05	CHECK	4644	$200.00	$7,104.48	0000000550627000A3
07-08	BANK ONE CARD PURCHA		$35.89	$7,068.59	0000000000249149Z2
07-08	BANK ONE ATM WITHDRA		$100.00	$6,968.59	0000000000240042?0
07-08	BANK ONE CARD PURCHA		$182.73	$6,785.86	0000000000246014I1
07-08	CHECK	4598	$300.00	$6,485.86	0000000550620739Z1
07-08	CHECK	4632	$25.00	$6,460.86	0000000550646939A8
07-08	CHECK	4633	$126.70	$6,334.16	0000000550620739Z0
07-08	CHECK	4637	$44.02	$6,290.14	0000000550639003?5
07-08	CHECK	4638	$300.00	$5,990.14	0000000550620739I9
07-08	CHECK	4639	$50.00	$5,940.14	0000000553064680S1
07-08	CHECK	4640	$73.15	$5,866.99	0000000550621104S4
07-09	BANK ONE 552	LOAN	$493.95	$5,373.04	0000000000317231S0
07-09	CHECK	4647	$1,600.00	$3,773.04	0000000550646818A6
07-09	CHECK	4618	$5.10	$3,767.94	0000000550634228A6
07-10	PULSE WITHDRAWAL FEE		$1.50	$3,766.44	0000000000250065A3
07-10	PULSE WITHDRAWAL		$204.00	$3,562.44	0000000000240065A3
07-10	CHECK	4619	$312.00	$3,250.44	0000000550636337?7
07-10	CHECK	4620	$50.00	$3,200.44	0000000550636337S6
07-10	CHECK	4634	$1,453.10	$1,747.34	0000000553062824A2
07-10	CHECK	4635	$20.00	$1,727.34	0000000550646207A3
07-10	CHECK	4636	$70.00	$1,657.34	0000000350627956?1
07-11	DEPOSIT		$200.00	$1,857.34	0000000550631418?0
07-11	CHECK	4643	$30.68	$1,826.66	0000000550646876?5
07-11	CHECK	4645	$140.75	$1,685.91	0000000550620148B6
07-12	BANK ONE CARD PURCHA		$23.01	$1,662.90	0000000000240500?5
07-12	BANK ONE CARD PURCHA		$93.32	$1,569.58	0000000000240624?6
07-15	BANK ONE CARD PURCHA		$41.28	$1,528.30	0000000000242430I1
07-15	CHECK	4617	$330.00	$1,198.30	0000000550624985A7
07-15	CHECK	4622	$21.00	$1,177.30	0000000550627351?1
07-15	CHECK	4646	$330.15	$847.15	0000000550624985A8
07-16	CHECK	4621	$35.30	$811.85	0000000550620161?4
07-17	BANK ONE ATM WITHDRA		$100.00	$711.85	0000000000240066?6
07-18	BANK ONE CARD PURCHA		$13.00	$698.85	0000000000240486?2
07-22	BANK ONE CARD PURCHA		$24.50	$674.35	0000000000241541?3
07-22	BANK ONE ATM WITHDRA		$100.00	$574.35	0000000000240066?3
07-23	BANK ONE CARD PURCHA		$20.00	$554.35	0000000000240560?2
07-23	PULSE WITHDRAWAL FEE		$1.50	$552.85	0000000000250375?1
07-23	PULSE WITHDRAWAL		$202.00	$350.85	0000000000240375?1
07-23	CHECK	4624	$7.60	$343.25	0000000062307151?5
07-23	INTEREST PAYMENT		$.52	$343.77	0000000000000000?0
07-23	SERVICE FEE		$12.00	$331.77	0000000000000000?0

GET YOUR MONEY QUICKER.
HAVE YOUR PAYCHECK OR SOCIAL SECURITY CHECK DEPOSITED DIRECTLY TO YOUR CHECKING ACCOUNT. IT'S SAFE, SIMPLE AND CONVENIENT. CONTACT YOUR EMPLOYER OR BANK ONE FOR DETAILS.

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G THOMAS PORTEOUS JR

1 29 16 35106

Acct # [redacted]
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LOANS SUBJECT TO APPROVAL.

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Bank One, NA
Louisiana Market
P.O. BOX 92102
Bedford , TX 76095-2102

1 42 16 37364

Acct # [redacted]
Taxpayer ID# 435641365

G THOMAS PORTEOUS JR
OR MRS G THOMAS PORTEOUS
4801 JETREY DR.
METAIRIE LA 70002-1426

Apr 23 through May 22, 2002

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FOR AUTOMATED ACCOUNT INFORMATION, PAYMENTS, TRANSFERS AND TO CHANGE YOUR ACCOUNT MAILING ADDRESS, CALL 1-800-777-8837 ANYTIME OR VISIT WWW.BANKONE.COM. TELEPHONE BANKERS ARE AVAILABLE DURING EXTENDED BUSINESS HOURS. FOR TEXT TELEPHONES (TDD/TTY), CALL 1-888-663-4833. PARA ESPANOL, LLAME AL 1-888-226-5663.

INTEREST ONE CHECKING
Account number [redacted]

	Amount
Interest earned this statement period	$0.71
Annual Percentage Yield Earned this statement period	0.27%
Interest paid this year	$3.09
Beginning balance	$546.73
Checks paid	- 10,010.25
Other withdrawals	- 2,258.30
Deposits	+ 12,844.77
Balance as of May 22	$1,120.91

Checks paid

Number	Amount	Date paid	Number	Amount	Date paid
4511	50.00	05-01	4533	517.15	05-09
4512	70.00	04-26	4534	1,605.00	05-07
4513	1,653.10	05-07	4535	133.55	05-09
4514	155.00	05-10	4536	150.00	05-09
4515	475.00	05-13	4537	71.26	05-16
4516	60.05	05-09	4538	110.00	05-09
4517	51.00	05-07	4539	75.00	05-13
4518	49.56	05-13	4540	50.00	05-13
4519	30.00	05-13	4562*	50.00	04-30
4520	59.42	05-13	4568*	27.00	04-25
4521	23.00	05-10	4569	40.00	04-29
4522	62.43	05-13	4570	19.24	04-29
4523	300.00	05-13	4571	43.25	05-02
4524	210.00	05-01	4573*	200.00	05-07
4525	390.00	05-06	4574	60.00	05-17
4526	27.71	05-07	4575	55.00	05-17
4527	27.00	05-08	4601*	70.00	05-07
4528	46.35	05-08	4602	141.00	05-07
4529	5.10	05-07	4603	25.73	05-07
4530	330.15	05-15	4604	20.20	05-17
4531	330.00	05-15	Total		10,010.25
4532	2,300.00	05-07			

* Checks not listed were shown on a previous statement or had not yet cleared as of 05-22-02.

Other withdrawals including charges and fees

Date	Description		Amount
04-23	Check Printing Fees/Etc.	PPD	15.30
04-23	Bank One ATM Withdrawal LA	080104 04/23:415 Metairie Road Metairie	20.00

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G THOMAS PORTEOUS JR

Acct # [redacted]
Apr 23 through May 22, 2002.
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Other withdrawals including charges and fees

Date	Description				
04-29	Bank One ATM Withdrawal LA	001082	04/261415 Metairie Road Metairie		20.00
04-29	Bank One ATM Withdrawal LA	001831	04/291415 Metairie Road Metairie		20.00
04-29	State Farm Re 22Insurance	0392761822	PPD		156.13
05-06	Bank One ATM Withdrawal	003835	05/043420 Severn Ave. Metairie LA		20.00
05-06	Bank One ATM Withdrawal LA	007179	05/034545 Veterans Blvd Metairie		200.00
05-07	Bank One Card Purchase	016637	05/06Kmart Metairie LA		57.74
05-07	Bank One Card Purchase	102894	05/06Breaux Mart #4 Metairie LA		91.40
05-08	Bank One Card Purchase Metairie LA		05/06Discount 26653345		20.01
05-08	Bank One ATM Withdrawal	004348	05/083420 Severn Ave. Metairie LA		100.00
05-09	Bank One 552 Loan Paymt	0003600000203579	PPD		493.95
05-13	Bank One ATM Withdrawal	005283	05/133420 Severn Ave. Metairie LA		20.00
05-13	Bank One ATM Withdrawal	005155	05/123420 Severn Ave. Metairie LA		200.00
05-14	Bank One Card Purchase LA	253811	05/14Sou Sav-A-Cent Metairi920763		78.78
05-15	Bank One Card Purchase		05/13Driftwood Spur Kenner LA		20.55
05-15	Bank One ATM Withdrawal	006443	05/153420 Severn Ave. Metairie LA		100.00
05-17	Bank One Card Purchase Orleans LA		05/16Walgreen 000138 New		40.23
05-17	Bank One Card Purchase Orleans LA		05/16Walgreen 000138 New		48.80
05-17	Bank One ATM Withdrawal LA	006726	05/171415 Metairie Road Metairie		100.00
05-20	Bank One Card Purchase LA		05/16Shell No.21738611033 Gretna		17.95
05-20	Bank One ATM Withdrawal	006310	05/183420 Severn Ave. Metairie LA		40.00
05-20	Bank One ATM Withdrawal	006927	05/183420 Severn Ave. Metairie LA		80.00
05-20	Pulse Withdrawal Fee				1.50
05-20	Pulse Withdrawal Orleans LA	008090	05/194 Canal St Harrahs New		184.00
05-22	Bank One ATM Withdrawal	007455	05/223420 Severn Ave. Metairie LA		100.00
05-22	Service Fee				12.00
					2,258.34

Fees and charges When you maintain a minimum Interest One Checking balance of $1,500.00 or a combined minimum balance of $5,000.00 in linked qualifying checking and savings accounts or a combined minimum balance of $15,000.00 in qualifying linked deposit and credit accounts each day during the statement period, your Interest One Checking monthly service fee is waived. On 04/23/02, your Interest One Checking balance was $546.00, combined minimum balance in linked qualifying deposit accounts was $546.00, and combined minimum balance in qualifying linked deposit and credit accounts was $546.00.

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G THOMAS PORTEOUS JR

Acct # [redacted]
Apr 23 through May 22, 2002
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Deposits and other additions

Date	Description			Amount
04-24	Deposit			90.00
04-29	Deposit			176.00
05-01	Usc Treas 310 Fed Salary [redacted]		PPD	7,886.09
05-03	Us Treasury 220 Tax Refund [redacted]	Irs	PPD	2,998.92
05-06	Deposit			520.00
05-09	Deposit			245.00
05-17	Deposit			268.05
05-20	Deposit			660.00
05-22	Interest Payment			0.71
				12,844.77

Account Daily Balance
Beginning Balance $544.73

Date	Description	Amount	Balance	Batch seq no
04-23	CHECK PRINTING FEES	$15.30	$529.43	0000000000112480704
04-23	BANK ONE ATM WITHDRA	$20.00	$509.43	0000000000240001004
04-23	CHECK 4569	$40.00	$469.43	0000000550636637063
04-23	CHECK 4570	$19.24	$450.19	0000000550636143844
04-24	DEPOSIT	$90.00	$540.19	0000000550637115388
04-25	CHECK 4568	$27.00	$513.19	0000000550630780195
04-26	CHECK 4572	$70.00	$443.19	0000000550647498117
04-29	DEPOSIT	$176.00	$619.19	0000000550626965640
04-29	BANK ONE ATM WITHDRA	$20.00	$599.19	0000000000240001082
04-29	BANK ONE ATM WITHDRA	$20.00	$579.19	0000000000240001831
04-29	STATE FARM RO 221BSU	$156.13	$423.06	0000000000379614451
04-30	CHECK 4562	$50.00	$373.06	0000000550621861911
05-01	USC TREAS 310 FED	$7,886.09	$8,259.15	0000000360040870640
05-01	CHECK 4511	$60.00	$8,199.15	0000000550648197676
05-01	CHECK 4524	$230.00	$7,969.15	0000000550631781711
05-02	CHECK 4571	$43.25	$7,945.90	0000000550050381200
05-03	US TREASURY 220 TAX	$2,998.92	$10,944.82	0000000360178880820
05-06	DEPOSIT	$520.00	$11,464.82	0000000550632645010
05-06	BANK ONE ATM WITHDRA	$20.00	$11,444.82	0000000000240038350
05-06	BANK ONE ATM WITHDRA	$200.00	$11,244.82	0000000000240071790
05-06	CHECK 4525	$390.00	$10,854.82	0000000550646963720
05-07	BANK ONE CARD PURCHA	$57.74	$10,797.08	0000000000240016637
05-07	BANK ONE CARD PURCHA	$91.40	$10,705.68	0000000000240102894
05-07	CHECK 4534	$1,605.00	$9,100.68	0000000550631144587
05-07	CHECK 4513	$1,453.10	$7,647.58	0000000550628157600
05-07	CHECK 4517	$51.00	$7,596.58	0000000550642100892
05-07	CHECK 4526	$27.71	$7,568.87	0000000550628611907
05-07	CHECK 4529	$5.10	$7,563.77	0000000550642182229
05-07	CHECK 4532	$2,300.00	$5,263.77	0000000550628157599
05-07	CHECK 4573	$200.00	$5,063.77	0000000550638810324
05-07	CHECK 4601	$70.00	$4,993.77	0000000550628088906
05-07	CHECK 4602	$141.00	$4,852.77	0000000550638611299
05-07	CHECK 4603	$25.73	$4,827.04	0000000550642237771
05-08	BANK ONE CARD PURCHA	$20.01	$4,807.03	0000000000240048593
05-08	BANK ONE ATM WITHDRA	$100.00	$4,707.03	0000000000240004348
05-08	CHECK 4527	$27.00	$4,680.03	0000000550633665356
05-08	CHECK 4528	$46.35	$4,633.68	0000000550633411966
05-09	DEPOSIT	$245.00	$4,878.68	0000000550646623560
05-09	BANK ONE 552 LOAN	$493.95	$4,384.73	0000000000032819896
05-09	CHECK 4536	$60.05	$4,324.68	0000000550645478558
05-09	CHECK 4533	$517.15	$3,807.53	0000000550088258688
05-09	CHECK 4535	$133.55	$3,673.98	0000000550636589692
05-09	CHECK 4536	$150.00	$3,523.98	0000000550644680087
05-09	CHECK 4538	$110.00	$3,413.98	0000000550646660051
05-10	CHECK 4514	$150.00	$3,258.98	0000000550630107864
05-10	CHECK 4521	$25.00	$3,233.98	0000000550644236540
05-13	BANK ONE ATM WITHDRA	$20.00	$3,213.98	0000000000240052283
05-13	BANK ONE ATM WITHDRA	$200.00	$3,013.98	0000000000240055155

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G THOMAS PORTEOUS JR

Acct # [redacted]
Apr 23 through May 22, 2002
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Account Daily Balance
Beginning Balance $544.73

Date	Description		Amount	Balance	Batch seq no
05-13	CHECK	4540	$50.00	$2,963.98	0000000550643922181
05-13	CHECK	4515	$475.00	$2,488.98	0000000550620759579
05-13	CHECK	4518	$49.56	$2,439.42	0000000550642103022
05-13	CHECK	4519	$50.00	$2,389.42	0000000550641189669
05-13	CHECK	4520	$69.42	$2,320.00	0000000550641053369
05-13	CHECK	4522	$62.43	$2,257.57	0000000550620759572
05-13	CHECK	4523	$300.00	$1,957.57	0000000550620759571
05-13	CHECK	4539	$75.00	$1,882.57	0000000550623739924
05-14	BANK ONE CARD PURCHA		$78.78	$1,803.79	0000000000242511011
05-15	BANK ONE CARD PURCHA		$20.55	$1,783.24	0000000000240511208
05-15	BANK ONE ATM WITHDRA		$100.00	$1,683.24	0000000000240066443
05-15	CHECK	4530	$330.15	$1,353.09	0000000550639534310
05-15	CHECK	4531	$330.00	$1,023.09	0000000550639534309
05-16	CHECK	4537	$71.26	$951.83	0000000550632340211
05-17	DEPOSIT		$268.05	$1,219.88	0000000550648540390
05-17	BANK ONE CARD PURCHA		$40.23	$1,179.65	0000000000240527480
05-17	BANK ONE CARD PURCHA		$48.80	$1,130.85	0000000000240527490
05-17	BANK ONE ATM WITHDRA		$100.00	$1,030.85	0000000000240067260
05-17	CHECK	4574	$60.80	$970.85	0000000550647941320
05-17	CHECK	4575	$55.00	$915.85	0000000550647788460
05-17	CHECK	4604	$20.20	$895.65	0000000550622077700
05-20	DEPOSIT		$660.00	$1,555.65	0000000550627543980
05-20	BANK ONE CARD PURCHA		$17.95	$1,537.70	0000000000241588860
05-20	BANK ONE ATM WITHDRA		$40.00	$1,497.70	0000000000240066310
05-20	BANK ONE ATM WITHDRA		$80.00	$1,417.70	0000000000240066927
05-20	PULSE WITHDRAWAL FEE		$1.50	$1,416.20	0000000000250080900
05-20	PULSE WITHDRAWAL		$184.00	$1,232.20	0000000000240080890
05-22	BANK ONE ATM WITHDRA		$100.00	$1,132.20	0000000000240067455
05-22	INTEREST PAYMENT		$.71	$1,132.91	0000000000000000000
05-22	SERVICE FEE		$12.00	$1,120.91	0000000000000000000

NOW AVAILABLE...BANK ONE MONEYMANAGER (SM) SOFTWARE, - POWERED BY MICROSOFT (R). TO REVIEW THE DEMO OR ORDER YOUR PERSONAL COPY, VISIT WWW.BANKONE.COM/MANAGEFINANCES START USING BANK ONE MONEYMANAGER SOFTWARE TODAY FOR ONLY $19.99, A $59.95 RETAIL VALUE.

IMPROVE YOUR HOUSE, YOUR HOME, YOUR LIFE AT BANK ONE. FROM NOW UNTIL JUNE 30, 2002 YOU CAN EARN UP TO $200 IN GIFT CARDS GOOD AT THE HOME DEPOT BY OPENING QUALIFYING ACCOUNTS. THE MORE ACCOUNTS YOU OPEN, THE MORE REWARDS YOU'LL EARN. EXISTING CUSTOMERS CAN GET EXTRA $20 REWARD. FOR DETAILS, STOP BY A BANK ONE NEAR YOU

HOMESTEAD ASSOCIATION
222 BARONNE STREET
NEW ORLEANS, LOUISIANA 70112

4 PAGE. 1

[redacted] 5/20/2002

MONEY MARKET FUNDS
TAX ID NUMBER [redacted]

* * * MONEY MARKET * * *
* * * STATEMENT * * *

MR G T PORTEOUS JR OR
MRS G T PORTEOUS JR
4801 NEYREY DR
METAIRIE LA 70002-1426

ACCOUNT NUMBER [redacted] STATEMENT PERIOD 4/21/2002 THRU 5/20/2002

DEMAND DEPOSIT SUMMARY

AVERAGE BALANCE		PREVIOUS BALANCE	2,783.70
6,721.56	4 CREDITS, INCLUDING	3 DEPOSITS, TOTALING	6,722.54
MINIMUM BALANCE	5 DEBITS, INCLUDING	4 CHECKS, TOTALING	745.87
2,783.70 ON 4/20		NEW BALANCE	8,760.37
YEAR TO DATE:		INTEREST EARNED	8.24
EARNINGS	17.03	ANNUAL PERCENTAGE YIELD EARNED	1.50%
SERVICE CHARGE	0.00	SERVICE CHARGE	0.00

TRANSACTIONS

DATE	DESCRIPTION		AMOUNT	BALANCE
	BEGINNING BALANCE			2,783.70
4/23	DEPOSIT TO DEMAND ACCOUNT		3,340.00	6,123.70
4/30	PREAUTHORIZED WITHDRAWAL		86.62-	6,037.08
	STATE FARM RO 22	INSURANCE		
4/30	CHECK NUMBER	622	36.53-	6,000.55
4/30	CHECK NUMBER	592	300.00-	5,700.55
5/06	DEPOSIT TO DEMAND ACCOUNT		2,200.00	7,900.55
5/08	CHECK NUMBER	623	154.97-	7,745.58
5/08	CHECK NUMBER	624	167.75-	7,577.83
5/17	DEPOSIT TO DEMAND ACCOUNT		1,174.30	8,752.13
5/20	DEMAND ACCOUNT EARNINGS CREDIT		8.24	8,760.37

CHECK SUMMARY

CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT
592	300.00	****622	36.53	623	154.97	624	167.75

UL05171

HP Exhibit 452(b)

[redacted] 6/20/2002

MONEY MARKET FUNDS
TAX ID NUMBER [redacted]

Fidelity
HOMESTEAD ASSOCIATION
222 BARONNE STREET
NEW ORLEANS, LOUISIANA 70112

* * * MONEY MARKET * * *
* * * STATEMENT * * *

MR G T PORTEOUS JR OR
MRS G T PORTEOUS JR
4801 NEYREY DR
METAIRIE LA 70002-1426

ACCOUNT NUMBER [redacted] STATEMENT PERIOD 5/21/2002 THRU 6/20/2002

DEMAND DEPOSIT SUMMARY

AVERAGE BALANCE		PREVIOUS BALANCE	8,760.37
7,897.27	3 CREDITS, INCLUDING	2 DEPOSITS, TOTALING	775.00
MINIMUM BALANCE	7 DEBITS, INCLUDING	4 CHECKS, TOTALING	1,692.00
7,318.37 ON 5/29		NEW BALANCE	7,843.37
YEAR TO DATE		INTEREST EARNED	10.00
EARNINGS 27.03	ANNUAL PERCENTAGE YIELD EARNED		1.50%
SERVICE CHARGE... 0.00		SERVICE CHARGE	0.00

TRANSACTIONS

DATE	DESCRIPTION	AMOUNT	BALANCE
	BEGINNING BALANCE		8,760.37
5/25	DEMAND ACCOUNT WITHDRAWAL	550.00-	8,210.37
5/29	PREAUTHORIZED WITHDRAWAL	163.68-	8,046.69
	SHOE STATION ACH CHECK 595 EDGE MS		
5/29	PREAUTHORIZED WITHDRAWAL	86.62-	7,960.07
	STATE FARM RO 22 INSURANCE		
5/29	CHECK NUMBER 594	250.70-	7,709.37
5/29	CHECK NUMBER 593	391.00-	7,318.37
6/04	DEPOSIT TO DEMAND ACCOUNT	600.00	7,918.37
6/04	CHECK NUMBER 596	50.00-	7,868.37
6/14	CHECK NUMBER 626	200.00-	7,668.37
6/17	DEPOSIT TO DEMAND ACCOUNT	165.00	7,833.37
6/20	DEMAND ACCOUNT EARNINGS CREDIT	10.00	7,843.37

CHECK SUMMARY

CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT
593	391.00	594	250.70	****596	50.00	****626	200.00

UL05172

HOMESTEAD ASSOCIATION
222 BARONNE STREET
NEW ORLEANS, LOUISIANA 70112

2 PAGE 1

[redacted] 7/20/2002

MONEY MARKET FUNDS
TAX ID NUMBER [redacted]

* * * MONEY MARKET * * *
* * * STATEMENT * * *

MR G T PORTEOUS JR OR
MRS G T PORTEOUS JR
4801 NEYREY DR
METAIRIE LA 70002-1426

ACCOUNT NUMBER [redacted] STATEMENT PERIOD 6/21/2002 THRU 7/20/2002

DEMAND DEPOSIT SUMMARY

AVERAGE BALANCE		PREVIOUS BALANCE	7,843.37
4,871.37	3 CREDITS, INCLUDING	2 DEPOSITS, TOTALING	705.23
MINIMUM BALANCE	4 DEBITS, INCLUDING	2 CHECKS, TOTALING	4,237.98
3,605.39 ON 7/08		NEW BALANCE	4,310.62
YEAR TO DATE:		INTEREST EARNED	5.23
EARNINGS	32.26	ANNUAL PERCENTAGE YIELD EARNED	1.31%
SERVICE CHARGE	0.00	SERVICE CHARGE	0.00

TRANSACTIONS

DATE	DESCRIPTION	AMOUNT	BALANCE
	BEGINNING BALANCE		7,843.37
6/24	CHECK NUMBER 627	2,800.00-	5,043.37
6/28	PREAUTHORIZED WITHDRAWAL STATE FARM RO 22 INSURANCE	86.62-	4,956.75
7/03	DEMAND ACCOUNT WITHDRAWAL	300.00-	4,656.75
7/08	CHECK NUMBER 597	1,051.36-	3,605.39
7/09	DEPOSIT TO DEMAND ACCOUNT	400.00	4,005.39
7/12	DEPOSIT TO DEMAND ACCOUNT	300.00	4,305.39
7/20	DEMAND ACCOUNT EARNINGS CREDIT	5.23	4,310.62

CHECK SUMMARY

CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT
597	1,051.36	****627	2,800.00				

UL05173

HOMESTEAD ASSOCIATION
222 BARONNE STREET
NEW ORLEANS, LOUISIANA 70112

4 PAGE 1

[redacted] 8/20/2002

MONEY MARKET FUNDS
TAX ID NUMBER [redacted]

* * * MONEY MARKET * * *
* * * STATEMENT * * *

MR G T PORTEOUS JR OR
MRS G T PORTEOUS JR
4801 NEYREY DR
METAIRIE LA 70002-1426

ACCOUNT NUMBER [redacted] STATEMENT PERIOD 7/21/2002 THRU 8/20/2002

DEMAND DEPOSIT SUMMARY

AVERAGE BALANCE		PREVIOUS BALANCE	4,310.62
4,387.17	4 CREDITS, INCLUDING	3 DEPOSITS, TOTALING	1,844.62
MINIMUM BALANCE	5 DEBITS, INCLUDING	4 CHECKS, TOTALING	2,353.86
3,796.76 ON 8/12		NEW BALANCE	3,801.38
YEAR TO DATE:		INTEREST EARNED	4.62
EARNINGS	58	ANNUAL PERCENTAGE YIELD EARNED	1.25
SERVICE CHARGE	00	SERVICE CHARGE	0.00

TRANSACTIONS

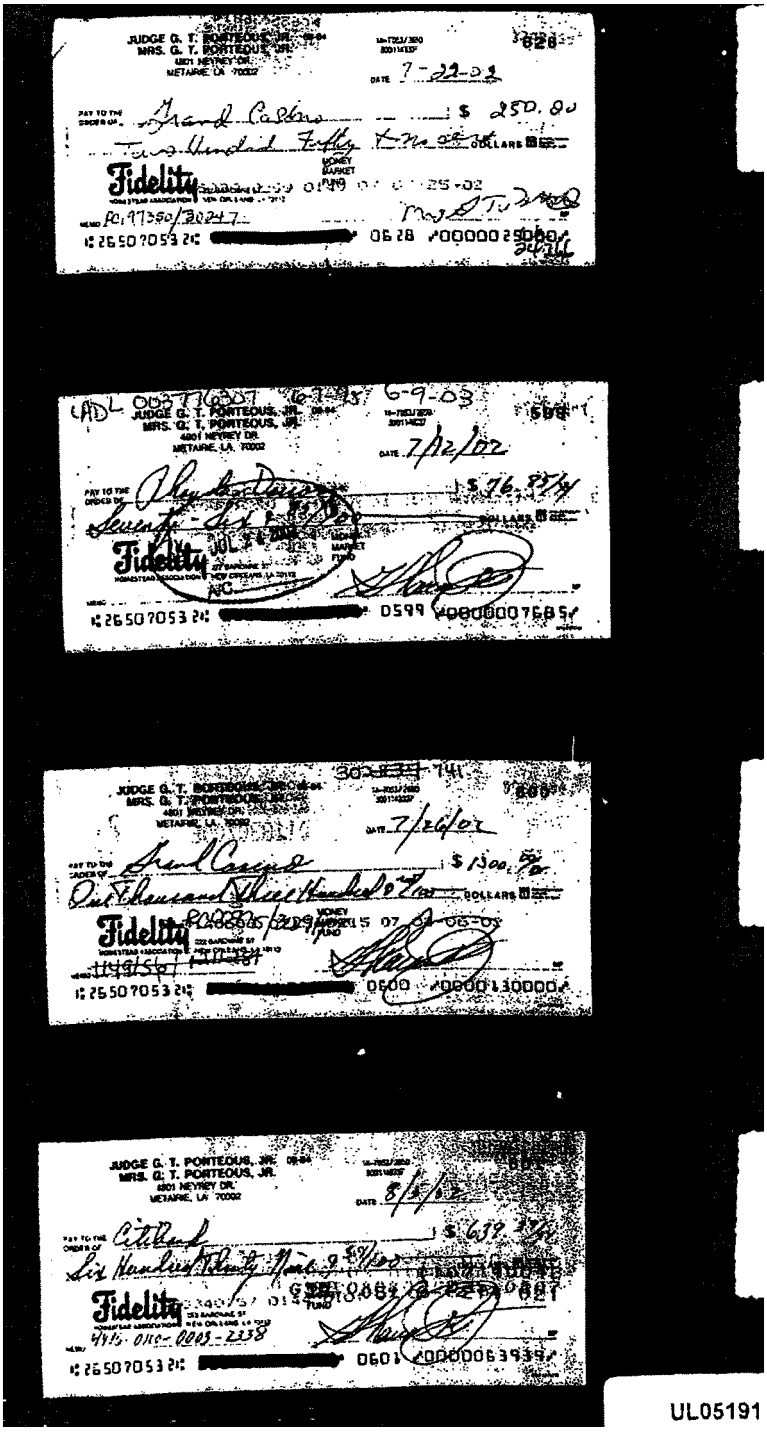
DATE	DESCRIPTION		AMOUNT	BALANCE
	BEGINNING BALANCE			4,310.62
7/25	DEPOSIT TO DEMAND ACCOUNT		240.00	4,550.62
7/25	CHECK NUMBER	599	76.85-	4,473.77
7/25	CHECK NUMBER	628	250.00-	4,223.77
7/27	DEPOSIT TO DEMAND ACCOUNT		700.00	4,923.77
7/30	PREAUTHORIZED WITHDRAWAL STATE FARM RO 22 INSURANCE		87.62-	4,836.15
8/05	DEPOSIT TO DEMAND ACCOUNT		900.00	5,736.15
8/06	CHECK NUMBER	600	1,300.00-	4,436.15
8/12	CHECK NUMBER	601	639.39-	3,796.76
8/20	DEMAND ACCOUNT EARNINGS CREDIT		4.62	3,801.38

CHECK SUMMARY

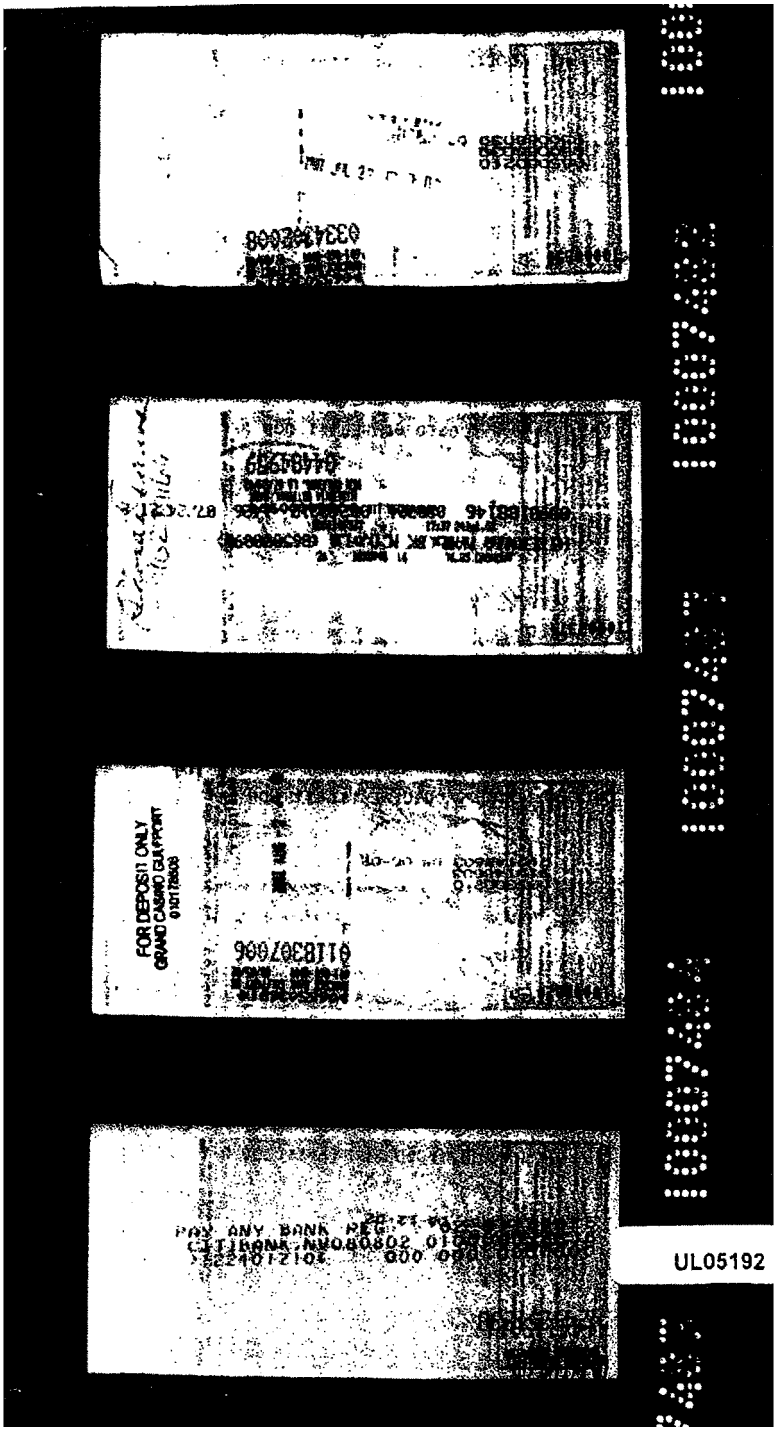
CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT
599	76.85	600	1,300.00	601	639.39	****628	250.00

UL05190

HP Exhibit 453


JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA 70002
DATE 7-22-02
PAY TO THE ORDER OF Grand Casino
$ 250.00
Two Hundred Fifty and no/100 DOLLARS
Fidelity
MONEY MARKET
MEMO
0628
0628
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA 70002
DATE 7/22/02
$ 76.85
0599
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA 70002
DATE 7/26/02
$ 1300.00
Fidelity
0600
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA 70002
DATE 8/1/02
$ 639.75
Fidelity
0601

UL05191


FOR DEPOSIT ONLY
GRAND CASINO GULFPORT
0101728508
PAY ANY BANK
CITIBANK, N.A.
UL05192

HOMESTEAD ASSOCIATION
222 BARONNE STREET
NEW ORLEANS, LOUISIANA 70112

4 PAGE 1

[redacted] 8/20/2002
MONEY MARKET FUNDS
TAX ID NUMBER [redacted]

* * * MONEY MARKET * * *
* * * STATEMENT * * *

MR G T PORTEOUS JR OR
MRS G T PORTEOUS JR
4801 NEYREY DR
METAIRIE LA 70002-1426

ACCOUNT NUMBER [redacted] STATEMENT PERIOD 7/21/2002 THRU 8/20/2002

DEMAND DEPOSIT SUMMARY

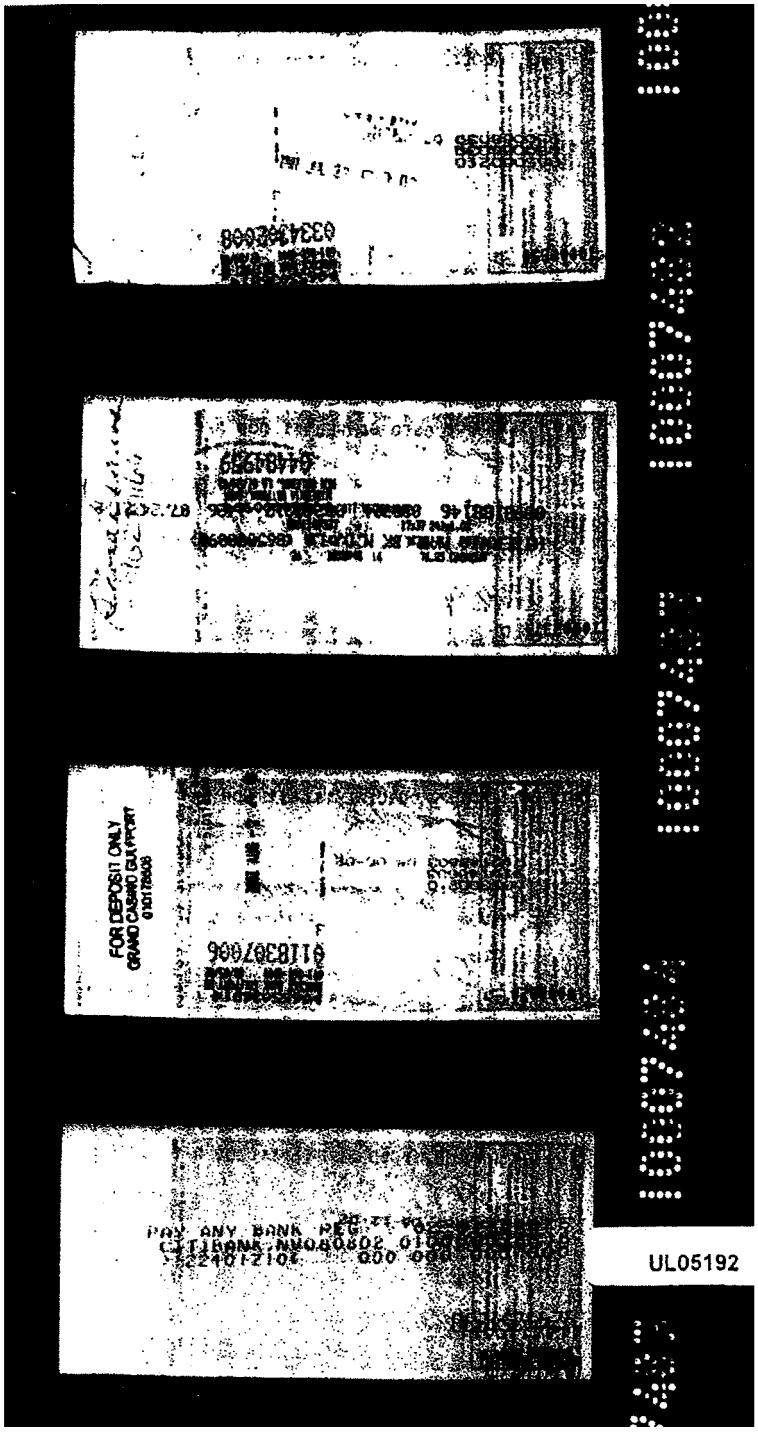
AVERAGE BALANCE		PREVIOUS BALANCE	4,310.62
4,387.17	CREDITS, INCLUDING 3	DEPOSITS, TOTALING	1,844.62
MINIMUM BALANCE	DEBITS, INCLUDING 4	CHECKS, TOTALING	2,353.86
3,796.76 ON 8/12		NEW BALANCE	3,801.38
YEAR TO DATE:		INTEREST EARNED	4.62
EARNINGS	4.98	ANNUAL PERCENTAGE YIELD EARNED	1.25%
SERVICE CHARGE	0.00	SERVICE CHARGES	0.00

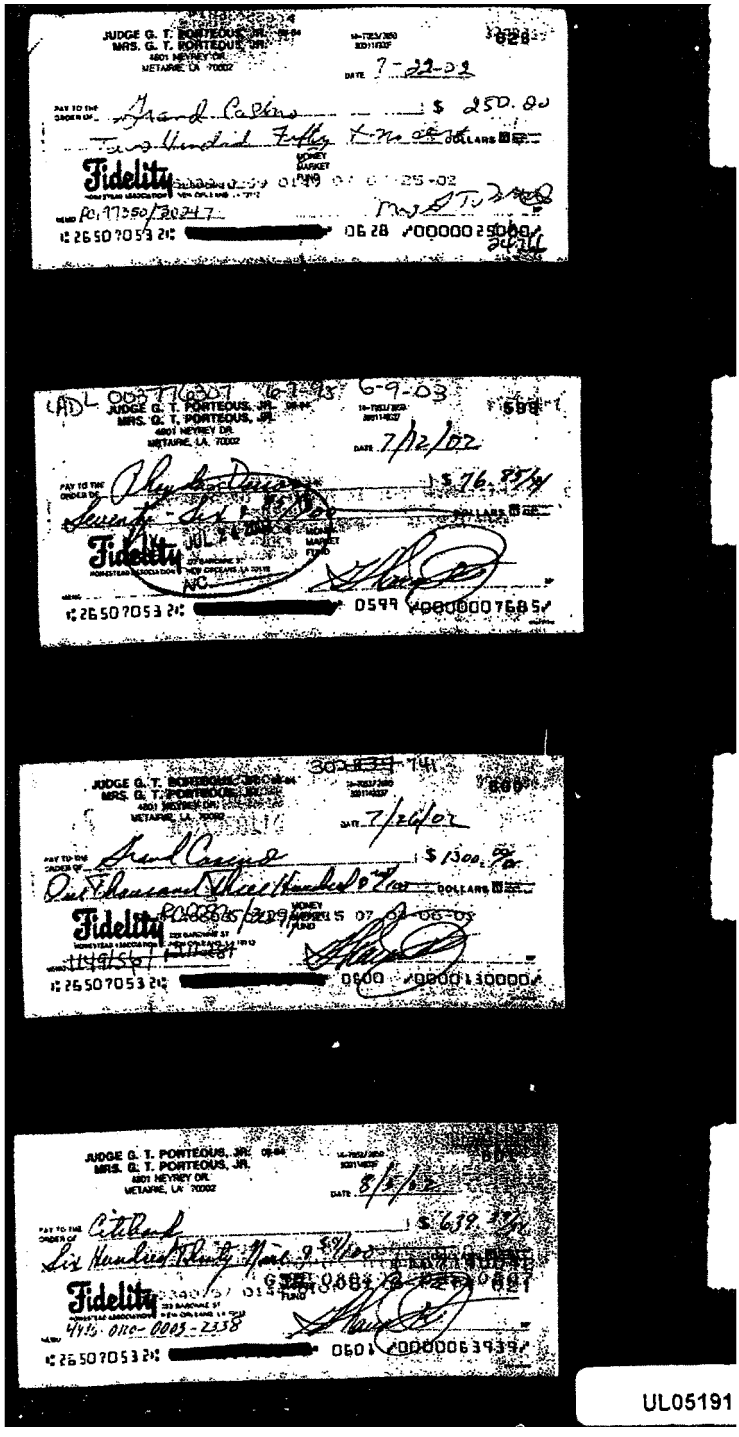
DATE	DESCRIPTION OF TRANSACTION		AMOUNT	BALANCE
	BEGINNING BALANCE			4,310.62
7/25	DEPOSIT TO DEMAND ACCOUNT		240.00	4,550.62
7/25	CHECK NUMBER	599	76.85-	4,473.77
7/25	CHECK NUMBER	628	250.00-	4,223.77
7/27	DEPOSIT TO DEMAND ACCOUNT		700.00	4,923.77
7/30	PREAUTHORIZED WITHDRAWAL STATE FARM RO 22 INSURANCE		87.62-	4,836.15
8/05	DEPOSIT TO DEMAND ACCOUNT		900.00	5,736.15
8/06	CHECK NUMBER	600	1,300.00-	4,436.15
8/12	CHECK NUMBER	601	639.39-	3,796.76
8/20	DEMAND ACCOUNT EARNINGS CREDIT		4.62	3,801.38

CHECK SUMMARY

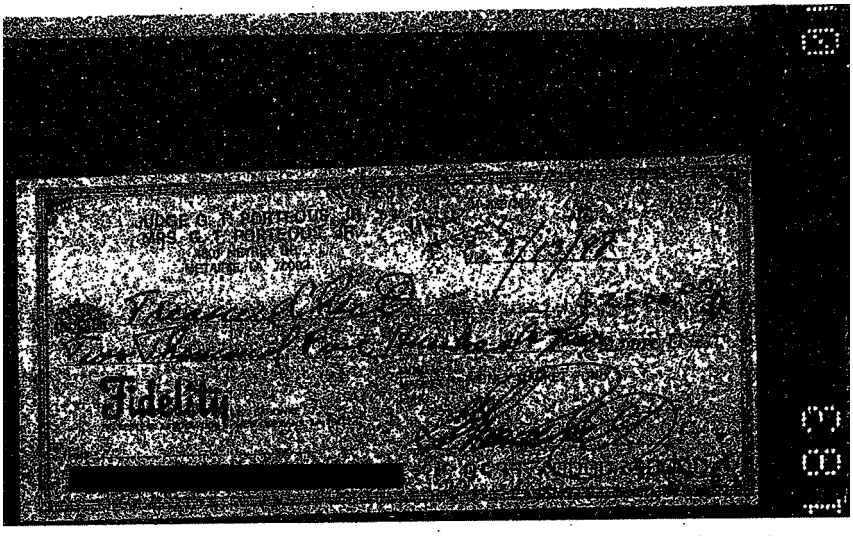
CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT	CHECK	AMOUNT
599	76.85	600	1,300.00	601	639.39	****628	250.00

UL05190


FOR DEPOSIT ONLY
GRAND CASINO GULFPORT
UL05192


JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA 70002
DATE 7-22-02
PAY TO THE ORDER OF Grand Casino
$ 250.00
Two Hundred Fifty & no/100 DOLLARS
Fidelity
MONEY MARKET FUND
MEMO PO#7350/20247
1:265070532:
0628
0628 #000002500#
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA. 70002
DATE 7/12/02
PAY TO THE ORDER OF
$ 76.85/94
Seventy-six & 85/100 DOLLARS
Fidelity
MONEY MARKET FUND
NC
1:265070532:
0599
0599 #0000007685#
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA. 70002
DATE 7/26/02
PAY TO THE ORDER OF Grand Casino
$ 1300.00
One thousand three hundred & 00/100 DOLLARS
Fidelity
MONEY MARKET FUND
1:265070532:
0600
0600 #0000130000#
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA. 70002
DATE 8/2/02
PAY TO THE ORDER OF Caesars
$ 639.00
Six Hundred Thirty-nine & 00/100 DOLLARS
Fidelity
MONEY MARKET FUND
1:265070532:
0601
0601 #0000063900#

UL05191



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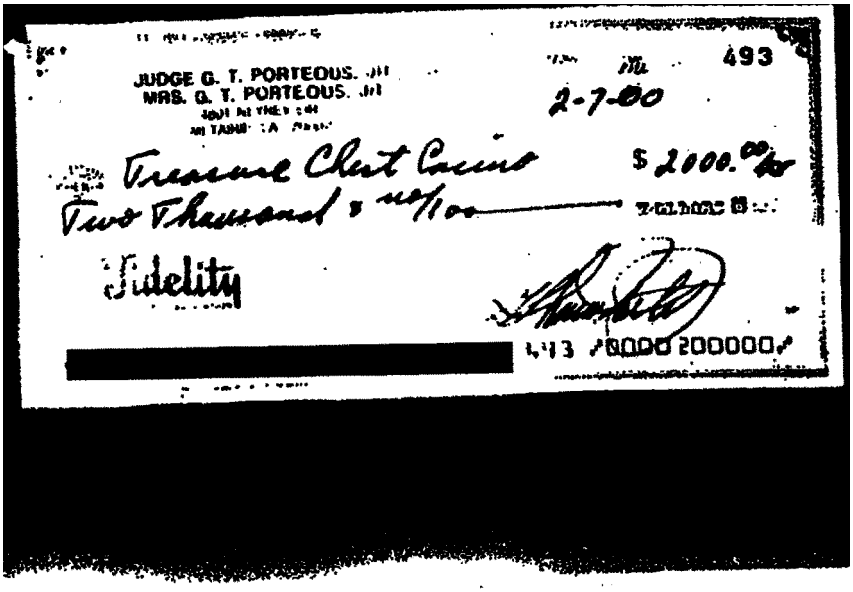


JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.

493

2-7-00

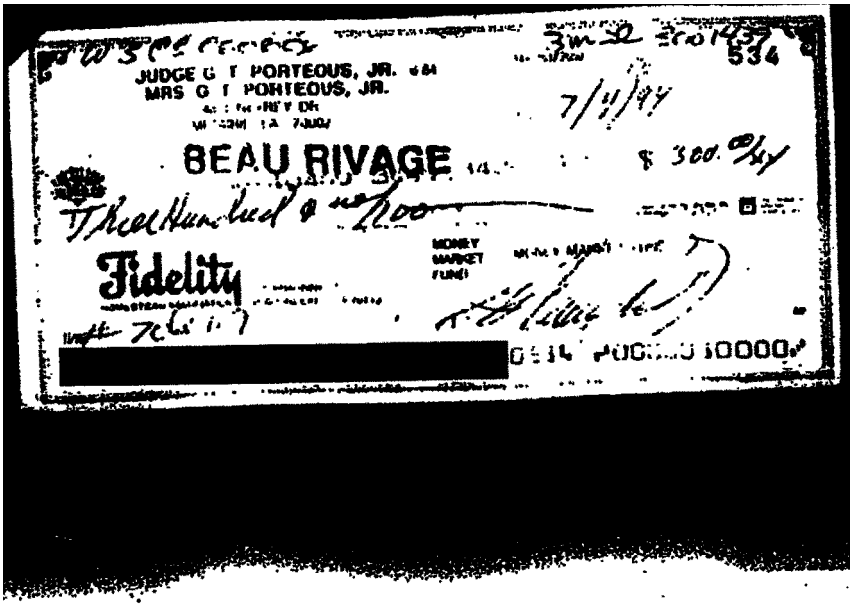
Treasure Chest Casino $ 2000.00

Two Thousand & no/100

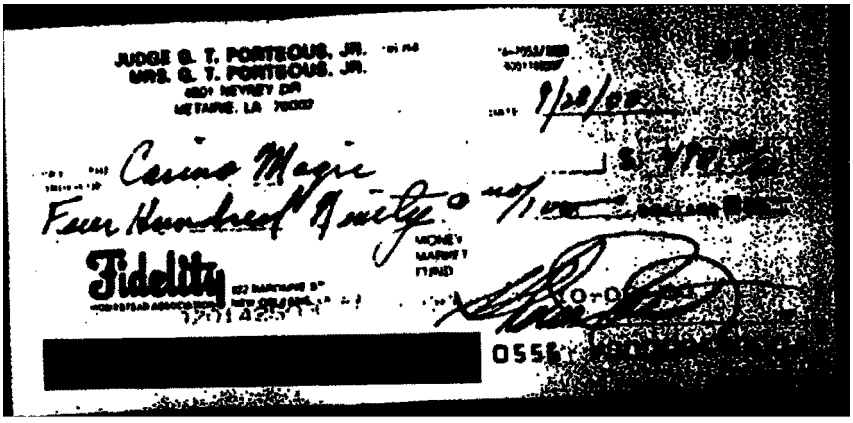
Fidelity

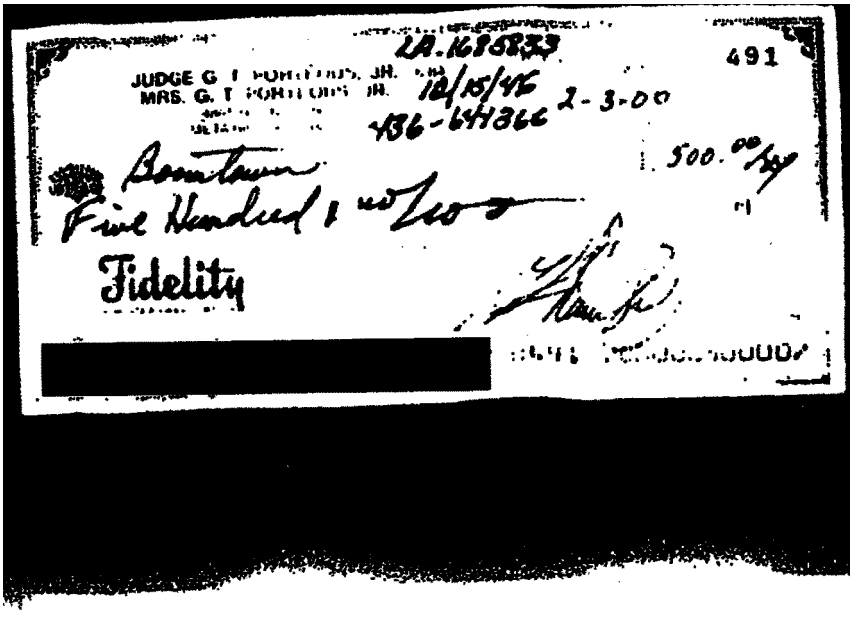
[redacted] 413 /0000200000/

UL05243

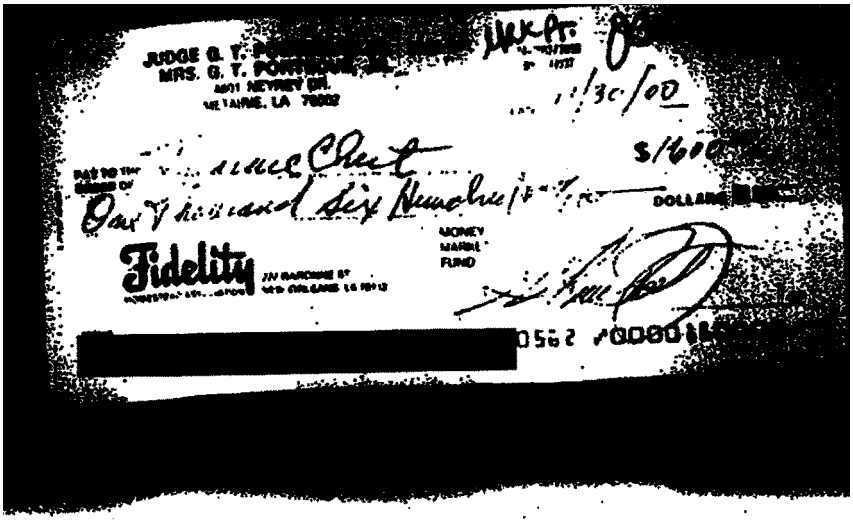

JUDGE G T PORTEOUS, JR.
MRS G T PORTEOUS, JR.
534
7/4/97
BEAU RIVAGE
$ 300.00
Fidelity
MONEY MARKET FUND

UL05233


JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
Casino Magic
Four Hundred Twenty
Fidelity
MONEY MARKET FUND
0558

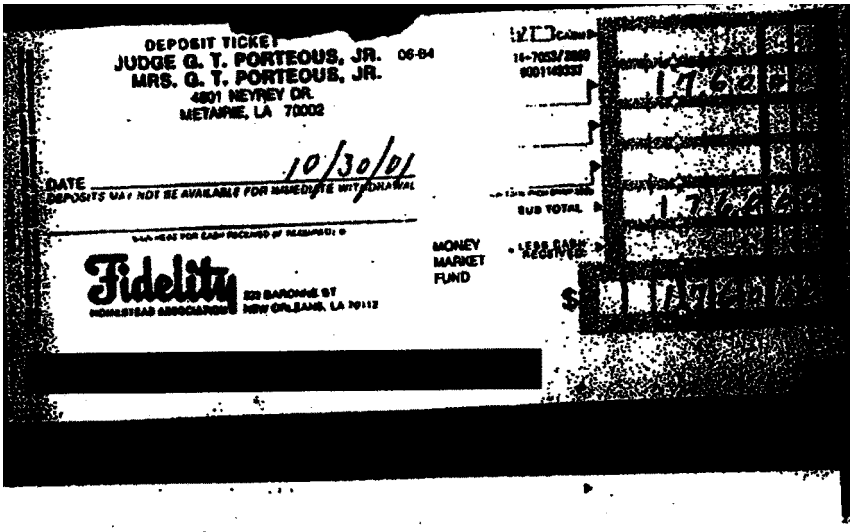

LA.1615833
491
JUDGE G T PORTEOUS, JR.
MRS. G. T PORTEOUS JR.
12/15/45
436-644366
2-3-00
500.00
Bonntown
Five Hundred & no/100
Fidelity

UL05241



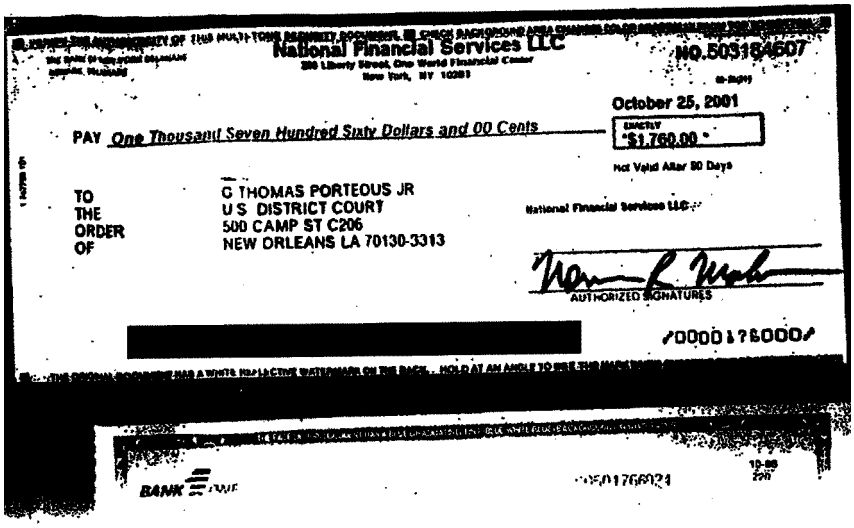
CK# 562

UL05269


DEPOSIT TICKET
JUDGE G. T. PORTEOUS, JR.
MRS. G. T. PORTEOUS, JR.
4801 NEYREY DR.
METAIRIE, LA 70002
08-84
DATE 10/30/01
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
SUB TOTAL
MONEY MARKET FUND
LESS CASH RECEIVED
Fidelity HOMESTEAD ASSOCIATION
520 BARONNE ST
NEW ORLEANS, LA 70112
$

UL05460

HP Ex. 530



National Financial Services LLC
200 Liberty Street, One World Financial Center
New York, NY 10281

NO.50316507

October 25, 2001

PAY One Thousand Seven Hundred Sixty Dollars and 00 Cents

$1,760.00

Not Valid After 90 Days

TO THE ORDER OF
G THOMAS PORTEOUS JR
U S DISTRICT COURT
500 CAMP ST C206
NEW ORLEANS LA 70130-3313

National Financial Services LLC

AUTHORIZED SIGNATURES

[redacted]

⑈0000 1?6000⑈

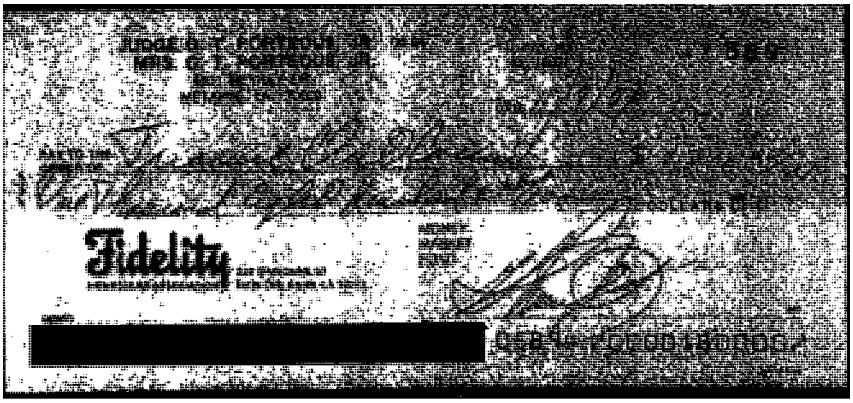
THIS DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK - HOLD AT AN ANGLE TO SEE THIS WATERMARK

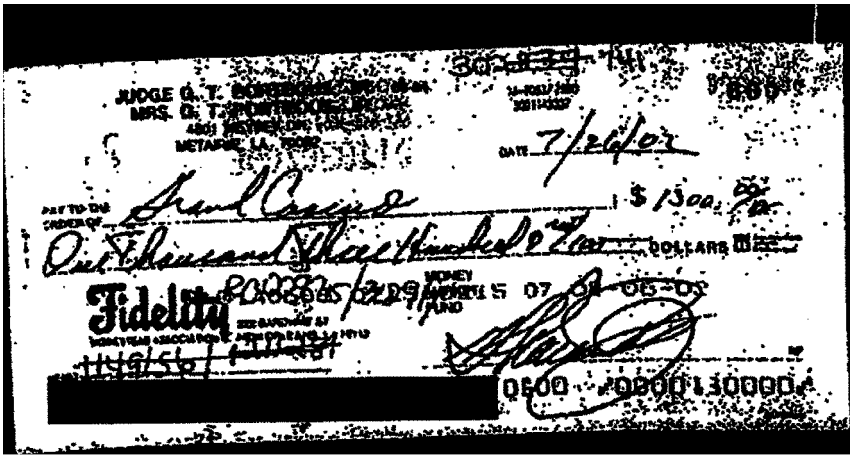
BANK ONE

⑆071766021

10-98
200

UL05462


Fidelity


JUDGE G. T.
MRS. G. T.
DATE 7/26/02
PAY TO THE ORDER OF
Paul Cooper
$ 1500.00
One Thousand Five Hundred & 00
DOLLARS
Fidelity
MONEY MARKET FUND
11/9/56
0600 0000130000

West's

LOUISIANA RULES OF COURT 1985

STATE and FEDERAL

With Amendments Received to
November 29, 1984

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WEST PUBLISHING CO.

DEF00001
PORT Exhibit 1001 (a)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his Activities.
3. A Judge Should Perform the Duties of his Office Impartially and Diligently.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties.
6. A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only under Restricted Circumstances.
7. A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office.

Compliance with the Code of Judicial Conduct.

Committee on Judicial Ethics.

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

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(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

B. Administrative Responsibilities

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. He should avoid appointments which tend to create suspicion of impropriety. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Recusation

The recusation of judges is governed by law.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities

A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer,

director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Arbitration

A judge should not act as an arbitrator or mediator.

E. Extra-judicial Appointments

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6

A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only under Restricted Circumstances

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct

A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge

A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore

A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge

A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge *pro tempore*.

Amended Oct. 29, 1982.

Committee on Judicial Ethics

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his Activities.
3. A Judge Should Perform the Duties of his Office Impartially and Diligently.
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(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

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(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. He should avoid appointments which tend to create suspicion of impropriety. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Recusation

The recusation of judges is governed by law.

Amended April 23, 1985.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there

will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

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A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities

A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

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A judge should not act as an arbitrator or mediator.

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A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

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A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

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A. Political Conduct in General

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(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct

A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

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Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge

A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupa-

tion and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore

A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge

A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge *pro tempore*.

Amended Oct. 29, 1982.

Committee on Judicial Ethics

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

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(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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PORT Exhibit 1001 (c)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his Activities.
3. A Judge Should Perform the Duties of his Office Impartially and Diligently.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties.
6. A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only under Restricted Circumstances.
7. A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office.

Compliance with the Code of Judicial Conduct.

Committee on Judicial Ethics.

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the

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part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. He should avoid appointments which tend to create suspicion of impropriety. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Recusation

The recusation of judges is governed by law.

Amended April 23, 1985.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of

proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities

A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Arbitration

A judge should not act as an arbitrator or mediator.

E. Extra-judicial Appointments

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or

locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6

A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only under Restricted Circumstances

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

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The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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CODE OF JUDICIAL CONDUCT

Effective January 1, 1976

Including Amendments Received Through March 1, 1988

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(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

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An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. He should avoid appointments which tend to create suspicion of impropriety. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Recusation. The recusation of judges is governed by law.

Amended April 23, 1985.

APPENDIX TO CANON 3. GUIDELINES FOR EXTENDED MEDIA COVERAGE OF PROCEEDINGS IN APPELLATE COURTROOMS

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the

court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a

recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985.

CANON 4. A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5. A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in

financial dealings or for any other purpose not related to his judicial duties.

D. **Arbitration.** A judge should not act as an arbitrator or mediator.

E. **Extra-judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6. A JUDGE SHOULD ACCEPT COMPENSATION FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES ONLY UNDER RESTRICTED CIRCUMSTANCES

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7. A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

A. **Political Conduct in General**

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. **Campaign Conduct.** A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. **Part-time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other

profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a sjudge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge *pro tempore.*

Amended Oct. 29, 1982.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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LOUISIANA RULES OF COURT 1989

STATE

With Amendments Received Through
January 15, 1989

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CODE OF JUDICIAL CONDUCT

Effective January 1, 1976

Including Amendments Received Through January 15, 1989

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Committee on Judicial Ethics.

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or

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language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administratiou of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. He should avoid appointments which tend to create suspicion of impropriety. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Recusation. The recusation of judges is governed by law.

Amended April 23, 1985.

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D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

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procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

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B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

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must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

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B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

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A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should

divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6. A JUDGE SHOULD ACCEPT COMPENSATION FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES ONLY UNDER RESTRICTED CIRCUMSTANCES

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7. A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial

functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge *pro tempore*.

Amended Oct. 29, 1982.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

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(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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CODE OF JUDICIAL CONDUCT

Effective January 1, 1976

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CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned

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for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. He should avoid appointments which tend to create suspicion of impropriety. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Recusation. The recusation of judges is governed by law.

Amended April 23, 1985.

Appendix to Canon 3. Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all

times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of tbe proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers

must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985.

CANON 4. A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5. A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

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(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

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(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

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Amended Oct. 31, 1975, effective Jan. 1, 1976.

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7. A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office.

Compliance With the Code of Judicial Conduct.
Committee on Judicial Ethics.

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants

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or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. A judge should avoid appointments which tend to create suspicion of impropriety. A judge should not approve the compensation of appointees beyond the fair value of services rendered. A judge should avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; and the spouses of a judge's children.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990, or any employee of a court who becomes a member of a judge's immediate family subsequent to employment; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. The recusation of judges is governed by law.

Amended April 23, 1985; Dec. 3, 1990.

Appendix to Canon 3.
Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge

of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places desig-

nated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985.

CANON 4. A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5. A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6. A JUDGE SHOULD ACCEPT COMPENSATION FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES ONLY UNDER RESTRICTED CIRCUMSTANCES

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7. A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his

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family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. **Retired Judge.** A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge *pro tempore*.

Amended Oct. 29, 1982.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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Supreme Court and Part II, being the Multistate Professional Responsibility Examination (MPRE). An applicant must be designated as having passed both Part I and Part II of the Louisiana Bar Examination prior to being eligible for admission. This designation and the right to re-examination will be as follows:

(A) As to Part I—An applicant who fails five (5) or more of the nine (9) examinations shall be considered as completely failing Part I of the examination as a whole. Such applicant shall be permitted to take a re-examination at the next regular examination of the Committee on Bar Admissions.

(B) As to Part I—An applicant who passes five (5) or more of the nine (9) examinations, but who fails either two (2) Code examinations or any three (3) of the nine (9) examinations shall be considered as conditionally failing Part I of the examination as a whole. Such applicant shall be placed on a special list and may make application for re-examination and shall be re-examined on only those separate examinations applicant did not pass in Part I. Should such applicants, upon re-examination, pass some of the separate examinations originally not passed in Part I, those shall be eliminated from future examinations. Such applicant shall be deemed to have passed Part I of the examination as a whole when applicant has cumulatively passed seven (7) of the nine (9) examinations provided that of the two examinations not passed, not more than one is on a required Code subject.

(C) As to Part II—The following provisions shall apply to the Multistate Professional Responsibility Examination (MPRE):

1. Applicant must receive a scaled score of 75 or better to be designated as having passed Part II of the examination.

2. All applicants must demonstrate compliance with the requirements of successful completion of the Multistate Professional Responsibility Examination (MPRE) by causing a certificate supplied by the agency administering such examination bearing the scaled score attained on the Multistate Professional Responsibility Examination (MPRE) to be forwarded directly to the Committee on Bar Admissions, Louisiana State Bar Association.

3. Successful completion of the Multistate Professional Responsibility Examination (MPRE) must have been within one year prior to the date of the original application for admission. Such successful completion and use of the MPRE score shall be valid for a total of three (3) years.

4. Applicants prior to August 1, 1984 who have, under the previous rules under Section 10 of Article XIV, passed the Ethics Examination and have been designated as conditionally failing the examination as a whole, under those rules, shall be considered as having fulfilled the requirement of passing the Multistate Professional Responsibility Examination (MPRE).

Amended effective July 27, 1982; May 3, 1985.

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS [VACATED AND REPEALED]

Vacated and repealed, effective April 1, 1990.

Pub. Note: See, now, Supreme Court Rule 19, supra.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Adopted December 18, 1986

Effective January 1, 1987

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CODE OF JUDICIAL CONDUCT

Effective January 1, 1976

Including Amendments Received Through March 15, 1992

Research Note

Use WESTLAW ® *to find cases citing or applying rules.* WESTLAW *may also be used to search for terms in court rules or to update court rules. See the LA-RULES and LA-ORDERS SCOPE screens for detailed descriptive information and search tips.*

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Compliance With the Code of Judicial Conduct.
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CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

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CANON 3
A Judge Should Perform the Duties of His Office Impartially and Diligently

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(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties bave consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

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(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. A judge should avoid appointments which tend to create suspicion of impropriety. A judge should not approve the compensation of appointees beyond the fair value of services rendered. A judge should avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a

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judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; and the spouses of a judge's children.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990, or any employee of a court who becomes a member of a judge's immediate family subsequent to employment; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. **Recusation.** The recusation of judges is governed by law.

Amended April 23, 1985; Dec. 3, 1990.

Appendix to Canon 3. Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of

a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

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CANON 5
A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6
A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7
A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

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(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge *pro tempore*.

Amended Oct. 29, 1982.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

*

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Effective January 1, 1976

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Research Note

Use WESTLAW ® *to find cases citing or applying rules.* WESTLAW *may also be used to search for terms in court rules or to update court rules. See the LA-RULES and LA-ORDERS SCOPE screens for detailed descriptive information and search tips.*

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Compliance With the Code of Judicial Conduct.
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CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of his judicial independence.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

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CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) Except as permitted by law, a judge should not permit private or ex parte interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. A judge should avoid appointments which tend to create suspicion of impropriety. A judge should not approve the compensation of appointees beyond the fair value of services rendered. A judge should avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that

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judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; and the spouses of a judge's children.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990, or any employee of a court who becomes a member of a judge's immediate family subsequent to employment; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. The recusation of judges is governed by law.

Amended April 23, 1985; Dec. 3, 1990.

APPENDIX TO CANON 3
GUIDELINES FOR EXTENDED MEDIA COVERAGE OF PROCEEDINGS IN APPELLATE COURTROOMS

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of

a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall position himself in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Adopted April 23, 1985.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

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CANON 5
A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict With His Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of his family residing in his household should not accept any gifts or favors which might reasonably appear as designed to affect his judgment or influence his official conduct.

(5) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6
A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

CANON 7
A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

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(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Amended June 28, 1983.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when he is sitting by assignment and then he shall be subject to the rules applicable to a judge pro tempore.

Amended Oct. 29, 1982.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect him.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairman of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairman during his term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairman of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

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CODE OF JUDICIAL CONDUCT

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Including Amendments Received Through March 1, 1994

Research Note

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7. A Judge Should Refrain From Political Activity Inappropriate to Judicial Office.

Compliance With the Code of Judicial Conduct.
Committee on Judicial Ethics.

CANON 1
A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993.

CANON 2
A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interest of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Amended and effective June 3, 1993.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

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A. **Adjudicative Responsibilities.**

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in judicial proceedings.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3A(5) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(6) Except as permitted by law, a judge should not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge should dispose promptly of the business of the court.

(8) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. **Administrative Responsibilities.**

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. A judge should avoid appointments which tend to create suspicion of impro-

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priety. A judge should not approve the compensation of appointees beyond the fair value of services rendered. A judge should avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; and the spouses of a judge's children.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990, or any employee of a court who becomes a member of a judge's immediate family subsequent to employment; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. **Recusation.** The recusation of judges is governed by law.

Amended April 23, 1985; Dec. 3, 1990; amended and effective June 3, 1993.

Appendix to Canon 3
Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equip-

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ment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Adopted April 23, 1985; amended and effective June 3, 1993.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993.

CANON 5

A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. **Avocational Activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and

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gage in the arts, sports, and other social and recreational activities, if such avocational activities do not ıtract from the dignity of judicial office or interfere th the performance of judicial duties.

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D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

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(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets

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for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his or her own behalf when he or she is a candidate for election or re-election, identify himself or herself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

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(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact.

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(1) is not required to comply with Canon 5C(2), 5D, and 5E;

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(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

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(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993.

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LOUISIANA RULES OF COURT

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CODE OF JUDICIAL CONDUCT

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CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interest of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Amended and effective June 3, 1993.

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CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in judicial proceedings.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3A(5) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(6) Except as permitted by law, a judge should not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge should dispose promptly of the business of the court.

(8) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge.

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(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. All appointments should be made on an impartial basis, with a view of selecting competent persons of good moral character. A judge should avoid appointments which tend to create suspicion of impropriety. A judge should not approve the compensation of appointees beyond the fair value of services rendered. A judge should avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; and the spouses of a judge's children.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990, or any employee of a court who becomes a member of a judge's immediate family subsequent to employment; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. **Recusation.** The recusation of judges is governed by law.

Amended April 23, 1985; Dec. 3, 1990; amended and effective June 3, 1993.

Appendix to Canon 3
Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. *"Presiding Judge"* means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. *"Party"* means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. *"Media"* means legitimate news gathering and reporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media

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disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Adopted April 23, 1985; amended and effective June 3, 1993.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge may make recommendations to the public and private fund-granting agencies on projects

and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993.

CANON 5
A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but may attend such events.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she should divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) A judge or a member of the judge's family residing in the judge's household should not accept any gifts or favors which might reasonably appear as designed to affect his or her judgment or influence his or her official conduct.

(5) Information acquired by a judge in his or her judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993.

CANON 6
A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

Amended and effective June 3, 1993.

CANON 7
A Judge Should Refrain From Political Activity Inappropriate to Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

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(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his or her own behalf when he or she is a candidate for election or re-election, identify himself or herself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his or her family to adhere to the same standards of political conduct that apply to the candidate;

(b) should prohibit public officials or employees subject to his or her direction or control from doing for him or her what the candidate is prohibited from doing under this Canon; and the candidate should not allow any other person to do for him or her what the candidate is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact.

Amended June 28, 1983; amended and effective June 3, 1993.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to a judge pro tempore.

Amended Oct. 29, 1982; amended and effective June 3, 1993.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

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(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993.

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Amended and effective June 3, 1993.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interest of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Amended and effective June 3, 1993.

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CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in judicial proceedings.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3A(5) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(6) Except as permitted by law, a judge should not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge should not accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts should also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge should dispose promptly of the business of the court.

(8) A judge should abstain from public comments about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge.

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(3) A judge should take or initiate appropriate disciinary measures against a judge or lawyer for unprossional conduct of which the judge may become ware.

(4) A judge should not make unnecessary appointents. All appointments should be made on an imrtial basis, with a view of selecting competent perns of good moral character. A judge should avoid ppointments which tend to create suspicion of impropiety. A judge should not approve the compensation appointees beyond the fair value of services renered. A judge should avoid nepotism. No spouse or ember of the immediate family of a judge shall be nployed in the court to which that judge was elected. mmediate family" means a judge's children, parents, rothers and sisters; the children and parents of a dge's spouse; and the spouses of a judge's children.

The provisions of this Subsection shall not prohibit ie continued employment of any employee of a court nployed by such court on or before December 31, 990, or any employee of a court who becomes a ember of a judge's immediate family subsequent to nployment; nor shall such provisions be construed hinder, alter, or in any way affect promotional lvancements for any such employee. The provisions this Subsection pertaining to nepotism shall not pply to mayors or justices of the peace.

C. Recusation. The recusation of judges is govrned by law.

mended April 23, 1985; Dec. 3, 1990; amended and effecve June 3, 1993.

Appendix to Canon 3
Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. *"Extended coverage"* means any recording or roadcasting by the news media of court proceedings sing television, radio, photographic or recording quipment.

B. *"Presiding Judge"* means the Chief Justice of he Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of vhich the Chief Justice or Chief Judge is not a iember.

C. *"Proceeding"* means any hearing, motion, argument on appeal or other matter held in open court vhich the public is entitled to attend.

D. *"Party"* means a named litigant of record who as appeared in the case, and includes a party's ounsel of record.

E. *"Media"* means legitimate news gathering and eporting agencies and their representatives.

F. *"Court"* means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media

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disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Adopted April 23, 1985; amended and effective June 3, 1993.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge may make recommendations to the public and private fund-granting agencies on projects

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nd programs concerning the law, the legal system, nd the administration of justice.

mended and effective June 3, 1993.

CANON 5
A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, ecture, teach, and speak on non-legal subjects, and ngage in the arts, sports, and other social and recre-tional activities, if such avocational activities do not etract from the dignity of judicial office or interfere ith the performance of judicial duties.

B. Civic and Charitable Activities. A judge may articipate in civic and charitable activities that do not eflect adversely upon his or her impartiality or inter-re with the performance of judicial duties. A judge ay serve as an officer, director, trustee, or non-legal ivisor of an educational, religious, charitable, frater-al, or civic organization not conducted for the eco-omic or political advantage of its members, subject to ie following limitations:

(1) A judge should not serve if it is likely that the ganization will be engaged in proceedings that ould ordinarily come before the judge or will be egularly engaged in adversary proceedings in any urt.

(2) A judge should not solicit funds for any edu-tional, religious, charitable, fraternal, or civic orga-zation, or use or permit the use of the prestige of dicial office for that purpose, but the judge may be ted as an officer, director, or trustee of such an ganization. A judge should not be a fund raising eaker or the guest of honor at an organization's nd raising events, but may attend such events.

C. Financial Activities.

(1) A judge should refrain from financial and busi-ss dealings that tend to reflect adversely on the dge's impartiality, interfere with the proper perfor-ance of judicial duties, exploit the judge's judicial sition, or involve the judge in frequent transactions th lawyers or persons likely to come before the urt on which he or she serves.

(2) Subject to the requirement of subsection (1), a dge may hold and manage investments, including al estate, and engage in other remunerative activity t should not serve as an officer, director, manager, employee of any bank, lending institution, home-ead or savings and loan association, insurance com-ny, public utility, and other businesses affected with ublic interest.

(3) A judge should manage investments and other ancial interests to minimize the number of cases in ich he or she is disqualified. As soon as a judge n do so without serious financial detriment, he or she should divest himself or herself of investments and other financial interests that might require fre-quent recusation.

(4) A judge or a member of the judge's family residing in the judge's household should not accept any gifts or favors which might reasonably appear as designed to affect his or her judgment or influence his or her official conduct.

(5) Information acquired by a judge in his or her judicial capacity should not be used or disclosed by the judge in financial dealings or for any other pur-pose not related to judicial duties.

D. Arbitration. A judge should not act as an arbitrator or mediator.

E. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is con-cerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993.

CANON 6
A Judge Should Accept Compensation for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and reimburse-ment of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not ex-ceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reim-bursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

Amended and effective June 3, 1993.

CANON 7
A Judge Should Refrain From Political Activity Inappropriate to Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his or her own behalf when he or she is a candidate for election or re-election, identify himself or herself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his or her family to adhere to the same standards of political conduct that apply to the candidate;

(b) should prohibit public officials or employees subject to his or her direction or control from doing for him or her what the candidate is prohibited from doing under this Canon; and the candidate should not allow any other person to do for him or her what the candidate is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact.

Amended June 28, 1983; amended and effective June 3, 1993.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, referee, special master, court commissioner, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is not required to comply with Canon 5C(2), 5D, and 5E;

(2) should not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to a judge pro tempore.

Amended Oct. 29, 1982; amended and effective June 3, 1993.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993.

*

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
CODE OF JUDICIAL CONDUCT

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CANON 1
A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

CANON 2
A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose

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membership limitations would be entitled to constitutional protection.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

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(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or bring the judiciary into disrepute, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

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(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

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CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

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CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but may attend such events.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize

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the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

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CANON 6
A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

CANON 7
A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

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(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

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(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election and no later than two years after the last election in which the candidate participates or until such time as the candidate's campaign debt is extinguished.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000-100,000	$ 50,000
100,001-200,000	$ 75,000
200,001-300,000	$100,000
300,001-400,000	$125,000
Over 400,000	$150,000

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F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

COMPLIANCE WITH THE **CODE** OF **JUDICIAL CONDUCT**

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed

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to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

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COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

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The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

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CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Including Amendments Received Through May 1, 1998

Research Note

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.

CANON 3. A Judge Shall Perform the Duties of Office Impartially and Diligently.

Appendix to Canon 3. Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms.

CANON 4. Quasi-Judicial Activities. A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.

CANON 5. Extra-Judicial Activities. A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.

CANON 6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.

CANON 7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit

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others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or bring the judiciary into disrepute, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

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(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials

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will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985; amended and effective June 8, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

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B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but may attend such events.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

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CANON 7
A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

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F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of nine members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and one other District Judge;

(d) The President of the City Judges Association;

(e) The Judicial Administrator; and

(f) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

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(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(d) The District Judges Association shall select one member to serve on the Committee for two years;

(e) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

ARTICLES OF INCORPORATION OF THE LOUISIANA STATE BAR ASSOCIATION

Including Amendments Received Through May 1, 1998

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

ARTICLE I. NAME

Section
1. Name.

ARTICLE II. DOMICILE, PRINCIPAL OFFICE AND SERVICE OF PROCESS

1. Domicile and Principal Office.
2. Service of Process.

ARTICLE III. OBJECTS, PURPOSES, DURATION AND POWERS

1. Objects and Purposes.
2. Duration, Powers, Etc.

ARTICLE IV. MEMBERSHIP

1. Active Members.
2. Faculty Members.
3. Inactive Members.
4. Authority to Practice Law Restricted.

ARTICLE V. REGISTRATION AND DUES

1. Registration.
2. Dues.
3. Payment of Dues.
4. Suspension for Non-payment of Dues.
5. Reinstatement of Inactive Members.
6. Fiscal Year.

Section

ARTICLE VI. OFFICERS

1. Officers.
2. Vacancies.
3. Nominating Committee.
4. Duties of Nominating Committee and Nominations by Petition.
5. Election by Secret Mail Ballot.
6. Voting.
7. Counting the Ballots.
8. Election Contests.

ARTICLE VII. BOARD OF GOVERNORS

1. Administration—Composition of Board—Eligibility.
2. Method of Election.
3. Election and Distribution of Ballots.
4. Voting.
5. Terms.
6. Vacancies on Board.
7. Meetings of the Board.
8. Service Without Compensation.
9. Assistant Secretary-Treasurer.

ARTICLE VIII. HOUSE OF DELEGATES

1. Powers and Functions.
2. Composition—Terms.
3. Election.
4. Meetings.

LOUISIANA
RULES OF COURT

STATE

1999

INCLUDING AMENDMENTS RECEIVED
THROUGH MAY 1, 1999

DEF00113
PORT Exhibit 1001 (o)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Including Amendments Received Through May 1, 1999

Research Note

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon
CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
CANON 3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
CANON 4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
CANON 5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
CANON 6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
CANON 7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.
COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or bring the judiciary into disrepute, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990. Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

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V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 8, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and

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engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but may attend such events.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 8, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge

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shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000

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Population of Election District	Amount of Campaign Funds That May Be Retained
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983. Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982. Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

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(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976. Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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CODE OF JUDICIAL CONDUCT

Effective January 1, 1976

Including Amendments Received Through May 1, 2000

Research Note

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
CANON 3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
CANON 4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
CANON 5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
CANON 6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
CANON 7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.
COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Al-

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though a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or bring the judiciary into disrepute, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

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(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with

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extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. . The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the eco-

omic or political advantage of its members, subject to ıe following limitations:

(1) A judge shall not serve if the judge knows, or ıould know, it is likely that the organization will be ıgaged in proceedings that would ordinarily come ɛfore the judge or will be regularly engaged in ɪversary proceedings in any court.

(2) A judge shall not solicit funds for any education-, religious, charitable, fraternal, or civic organization, · use or permit the use of the prestige of judicial ffice for that purpose, but the judge may be listed as ı officer, director, or trustee of such an organization. owever, it shall not be a violation of this Canon for a dge to privately solicit funds for the judge's local ıurch from a local church member. A judge should ɔt be a fund raising speaker or the guest of honor at ı organization's fund raising events, but may attend ıch events.

C. **Financial Activities.**

(1) A judge shall refrain from financial and business ɜalings that tend to reflect adversely on the judge's ıpartiality, interfere with the proper performance of dicial duties, exploit the judge's judicial position, or volve the judge in frequent transactions with law-ɜrs or persons likely to come before the court on ıich he or she serves.

(2) Subject to the requirement of subsection (1), a dge may hold and manage investments, including al estate, and engage in other remunerative activity ıt shall not serve as an officer, director, manager, or ıployee of any bank, lending institution, homestead savings and loan association, insurance company, ıblic utility, and other businesses affected with a ıblic interest.

(3) A judge should manage investments and other ıancial interests to minimize the number of cases in ıich he or she is disqualified. As soon as a judge n do so without serious financial detriment, he or e shall divest himself or herself of investments and ıer financial interests that might require frequent cusation.

(4) Information acquired by a judge in his or her ɪicial capacity shall not be used or disclosed by the ɪge in financial dealings or for any other purpose t related to judicial duties.

D. **Service as Arbitrator or Mediator.** A judge all not act as an arbitrator or mediator or otherwise rform judicial functions in a private capacity.

E. **Extra-Judicial Appointments.** A judge shall t accept appointment to a governmental committee, ɪmmission, or other position that is concerned with ues of fact or policy on matters other than the provement of the law, the legal system, or the ministration of justice. A judge, however, may ɔresent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. **Expenses.** Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. **Gifts.** A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. **Annual Reports.**

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. **Political Conduct in General.**

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

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F. Other Political Activity. A judge shall not ngage in any other political activity except on behalf f measures to improve the law, the legal system or he administration of justice, or as expressly autho- ized by law.

G. Applicability. Canon 7 generally applies to all ıcumbent judges and judicial candidates. A success- ıl candidate, whether or not an incumbent, is subject) judicial discipline for his or her campaign conduct; n unsuccessful candidate who is a lawyer is subject to :wyer discipline for his or her campaign conduct. A :wyer who is a candidate for judicial office is subject) Rule 8.2(a) and (b) of the Louisiana Rules of rofessional Conduct.

H. Definition of Candidate. A candidate is a ərson seeking election or reelection to a judicial fice. A person becomes a candidate for judicial fice as soon as he or she makes a public announce- ent of candidacy, declares or files as a candidate th the election or appointment authority, or autho- es solicitation or acceptance of contributions or pport, whichever occurs first. The term "candi- te" has the same meaning when applied to a judge eking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge all resign his or her office when the judge becomes :andidate either in a party primary or in a general ɛction for a non-judicial office, except that a judge ıy continue to hold judicial office while being a ıdidate for election to or serving as a delegate in a te constitutional convention, if the judge is other- ɜe permitted by law to do so.

ıended June 28, 1983; amended and effective July 1, 1997; ended May 28, 1998, effective July 1, 1998; amended and ɛctive June 3, 1993; amended July 3, 1996, effective July 996; amended and effective July 1, 1997; amended May 1998, effective July 1, 1998.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

ıll elected judges and anyone, whether or not a yer, who is an officer of a court of record perform- judicial functions, including an officer such as a ge ad hoc, judge pro tempore, referee, special ıster, court commissioner, judicially appointed hear- officer, or magistrate, and anyone who is a justice he peace, is a judge for the purpose of this Code. judges shall comply with this Code.

. **Part-Time Judge.** A part-time judge is a ge who serves on a continuing or periodic basis, is permitted by law to devote time to some other 'ession or occupation and whose compensation for reason is less than that of a full-time judge.

part-time judge:

) is exempt from Canons 5C(2), 5D, and 5E;

) shall not practice law in the court on which he he serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not gov- erned by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judi- cially appointed hearing officers are required to com- ply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Associa- tion and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Asso- ciation.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993, amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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LOUISIANA
RULES OF COURT

STATE

2001

INCLUDING AMENDMENTS RECEIVED
THROUGH MAY 1, 2001

DEF00131
PORT Exhibit 1001 (q)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Including Amendments Received Through May 1, 2001

Research Note

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 18, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall

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not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or bring the judiciary into disrepute, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained

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from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared

V Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When

extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge

may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but may attend such events.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

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(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; amended and effective July 1, 1997; amended May 28, 1998, effective July 1, 1998; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended May 28, 1998, effective July 1, 1998.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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5390

LOUISIANA
RULES OF COURT

STATE

2002

INCLUDING AMENDMENTS RECEIVED
THROUGH MAY 1, 2002

INCLUDES NEW RULES FOR LOUISIANA DISTRICT COURTS,
AND NUMBERING SYSTEMS FOR LOUISIANA FAMILY
AND DOMESTIC RELATIONS COURTS AND JUVENILE COURTS,
EFFECTIVE APRIL 1, 2002

WEST GROUP
A THOMSON COMPANY

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DEF00140
PORT Exhibit 1001 (r)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Including Amendments Received Through May 1, 2002

Research Note

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
CANON 3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
CANON 4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
CANON 5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
CANON 6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
CANON 7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.
COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the

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judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

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(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1992; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not

reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund raising speaker or the guest of honor at an organization's fund raising events, but may attend such events.

C. **Financial Activities.**

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. **Service as Arbitrator or Mediator.** A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. **Extra-Judicial Appointments.** A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. **Compensation.** Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. **Expenses.** Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. **Gifts.** A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. **Annual Reports.**

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. **Political Conduct in General.**

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court;

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iv) while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

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F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended May 28, 1998, effective July 1, 1998; amended March 13, 2002, effective April 15, 2002.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

ARTICLES OF INCORPORATION OF THE LOUISIANA STATE BAR ASSOCIATION

Including Amendments Received Through May 1, 2002

Research Note

Use WESTLAW to find cases citing a rule. WESTLAW may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

ARTICLE I. NAME

Section
1. Name.

ARTICLE II. DOMICILE, PRINCIPAL OFFICE AND SERVICE OF PROCESS

1. Domicile and Principal Office.
2. Service of Process.

ARTICLE III. OBJECTS, PURPOSES, DURATION AND POWERS

1. Objects and Purposes.
2. Duration, Powers, Etc.

ARTICLE IV. MEMBERSHIP

1. Active Members.
2. Faculty Members.
3. Inactive Members.
4. Authority to Practice Law Restricted.

ARTICLE V. REGISTRATION AND DUES

1. Registration.
2. Dues.
3. Payment of Dues.
4. Suspension for Non-payment of Dues.
5. Reinstatement of Inactive Members.
6. Fiscal Year

ARTICLE VI. OFFICERS

1. Officers.
2. Rotation of Officers.

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LOUISIANA
RULES OF COURT

STATE

2003

INCLUDING AMENDMENTS RECEIVED
THROUGH MAY 1, 2003

INCLUDES RULES FOR LOUISIANA DISTRICT COURTS,
AND NUMBERING SYSTEMS FOR LOUISIANA FAMILY
AND DOMESTIC RELATIONS COURTS AND JUVENILE COURTS

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PORT Exhibit 1001 (s)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975

Effective January 1, 1976

Including Amendments Received Through May 1, 2003

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 18, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of

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judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

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(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials

will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed

XV. The confidentiality of the attorney/client relationship must be protected Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

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B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective February 12, 2003.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7
A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court;

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iv) while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000

Population of Election District	Amount of Campaign Funds That May Be Retained
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

ARTICLES OF INCORPORATION OF THE LOUISIANA STATE BAR ASSOCIATION

Including Amendments Received Through May 1, 2003

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

ARTICLE I. NAME

Section

1. Name.

ARTICLE II. DOMICILE, PRINCIPAL OFFICE AND SERVICE OF PROCESS

1. Domicile and Principal Office.

Section

2. Service of Process.

ARTICLE III. OBJECTS, PURPOSES, DURATION AND POWERS

1. Objects and Purposes.
2. Duration, Powers, Etc.

Governors or officers of this Association which is provided by law.

Added Jan. 10, 1991.

(1) *Administrative Law.* The purposes of this Section are to provide a forum for study and discussion of administrative law issues arising under the laws of the State of Louisiana and of the United States; to contribute to the continuing education of the attorney who practices in this field; to disseminate information regarding recent administrative law decisions of the state and federal agencies and courts; to encourage publication of legal writings on administrative law questions among the members of the Association; to establish liaison with the Louisiana State Bar Association, the American Bar Association, and the legal academic community to achieve these purposes; and to take such actions in respect thereto as may be desirable and consistent with the Articles of Incorporation and Bylaws of this Association.

(22) *Public Utility.* The purposes of this Section shall be to encourage and foster discussions in the field of public utilities; to contribute to and provide opportunities for the continuing education of the attorney who practices in the public utility field; to promote interest in and study of the existing statutes and jurisprudence, which govern this field; and to cooperate and establish liaison with the Louisiana State Bar Association, American Bar Association, local bar associations and the legal academic community to achieve these purposes whenever possible in a manner not otherwise inconsistent with these Bylaws.

Amended June 8, 2001.

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CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975
Effective January 1, 1976

Including Amendments Received Through May 1, 2004

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 18, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall

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not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained

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from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When

extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge

may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. **Financial Activities.**

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective Feb. 12, 2003

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. **Gifts.** A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. ~~In the~~ report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court;

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iv) while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; Amended and effective June 3, 1993, amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

DEF00167

5418

LOUISIANA
RULES OF COURT

STATE

2005

INCLUDES RULES FOR LOUISIANA DISTRICT COURTS,
AND NUMBERING SYSTEMS FOR LOUISIANA FAMILY
AND DOMESTIC RELATIONS COURTS AND JUVENILE COURTS

THOMSON
WEST

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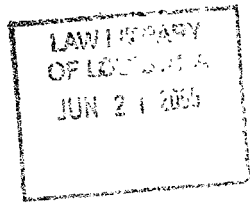

DEF00168
PORT Exhibit 1001 (u)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975
Effective January 1, 1976

Including Amendments Received Through May 1, 2005

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon
1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

DEF00169

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Jan. 13, 2006, effective Feb. 1, 2005.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

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C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispnte as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective Feb. 12, 2003

CANON 6
A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $250 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iii) while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a

charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court

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Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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LOUISIANA RULES OF COURT

STATE

2006

INCLUDES RULES FOR LOUISIANA DISTRICT COURTS, AND NUMBERING SYSTEMS FOR LOUISIANA FAMILY AND DOMESTIC RELATIONS COURTS AND JUVENILE COURTS

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PORT Exhibit 1001 (v)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975
Effective January 1, 1976

Including Amendments Received Through May 1, 2006

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-ORDERS Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon
1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following new Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

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B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Jan. 13, 2005, effective Feb. 1, 2005.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge sball not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

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C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

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CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize
the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective Feb. 12, 2003.

CANON 6
A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and
Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $500 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

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(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

(3) A judge shall file initial and annual disclosure statements with the Office of the Judicial Administrator of the Supreme Court of Louisiana if the judge derives directly, or through a legal entity of which he/she owns ten percent or more, anything of economic value, when that value exceeds $2,500, from a contract or subcontract which is related to a disaster or emergency declared by the governor, and when the judge knows or reasonably should know the contract or subcontract is or may be funded or reimbursed in whole or in part with federal funds.

Initial disclosure statements shall be due on or before March 1, 2006, or within 15 days after the judge or legal entity enters into such a contract or subcontract, whichever occurs later. Thereafter, annual disclosure statements are due on or before January 31st. Disclosure statements shall be subject to public inspection.

Disclosure statements shall contain the following information:

(a) The name, business address and office held by the judge;

(b) If through a legal entity,

(i) the name and business address of the legal entity;

(ii) the percentage of the judge's ownership interest in the legal entity;

(iii) the position, if any, held by the judge in the legal entity;

(c) The nature of the contract or subcontract, including:

(i) the amount of the contract or subcontract;

(ii) a description of the goods or services provided or to be provided pursuant to the contract or subcontract;

(d) The amount of income or value of anything of economic value to be derived or, if the actual amount is unknown at the time the statement is due, the amount reasonably expected to be derived by the judge from the contract or subcontract.

Any judge who is subject to the provisions of this subpart shall be required to file annual disclosure statements until a disclosure statement is filed after the completion of the contract or subcontract subject to disclosure, or until the judge vacates his/her judicial office, whichever occurs first. Annual disclosure statements shall not be required for the receipt of things of economic value pursuant to contracts or subcontracts entered into prior to the judge taking office; however, if a judge receives or reasonably expects to receive a thing of economic value otherwise required to be disclosed by this subpart pursuant to the renewal of such a contract or subcontract occurring after the judge takes office, the judge shall file a disclosure statement no later than 15 days after such renewal.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996; amended Dec. 6, 2005, effective Jan. 1, 2006; amended Jan. 10, 2006, effective Feb. 1, 2006.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iii) while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participat-

ing in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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(i) employing one or more members of the bar of this State;

(ii) being employed by one or more members of the bar of this State or by any partnership or professional law corporation which includes members of the bar of this State or which maintains an office in this State; and

(iii) being a partner in any partnership, shareholder in any professional law corporation, or member of a limited liability company which includes members of the bar of this State or which maintains an office in this State; and

(b) attorney-client privilege, work-product privilege and similar professional privileges.

B. Notwithstanding paragraph A(1) of this subsection, a person licensed as a legal consultant is not required to comply with the minimum requirements of continuing legal education as mandated by Rule 1.1(b) of Article XVI of these Articles of Incorporation.

8. **Revocation of License.**

In the event the Supreme Court determines that a person licensed as a legal consultant no longer meets the requirements for licensure, it shall revoke the license granted to such person.

Adopted May 9, 1996, effective July 1, 1996.

Historical Notes

A prior § 11 of Article 14 of the Articles of Incorporation of the Louisiana State Bar Association was deleted.

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS [REPEALED]

§§ 1 to 16. Vacated and repealed effective April 1, 1990

Publisher's Note: See now Supreme Court Rule XIX.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through May 1, 2006

Rule

1.0. Terminology.

CLIENT-LAWYER RELATIONSHIP

1.1. Competence.
1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.
1.3. Diligence.
1.4. Communication.
1.5. Fees.
1.6. Confidentiality of Information.
1.7. Conflict of Interest: Current Clients.
1.8. Conflict of Interest: Current Clients: Specific Rules.
1.9. Duties to Former Clients.
1.10. Imputation of Conflicts of Interest: General Rule.
1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees.
1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.
1.13. Organization as Client.
1.14. Client with Diminished Capacity.
1.15. Safekeeping Property.
1.16. Declining or Terminating Representation.
1.18. Duties to Prospective Client.

COUNSELOR

2.1. Advisor.
2.2. [Deleted].
2.3. Evaluation for Use by Third Persons.
2.4. Lawyer Serving as Third-Party Neutral.

ADVOCATE

3.1. Meritorious Claims and Contentions.
3.2. Expediting Litigation.

Rule

ADVOCATE—Cont'd

3.3. Candor Toward the Tribunal.
3.4. Fairness to Opposing Party and Counsel.
3.5. Impartiality and Decorum of the Tribunal.
3.6. Trial Publicity.
3.7. Lawyer as Witness.
3.8. Special Responsibilities of a Prosecutor.
3.9. Advocate in Nonadjudicative Proceedings.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

4.1. Truthfulness in Statements to Others.
4.2. Communication with Person Represented by Counsel.
4.3. Dealing with Unrepresented Person.
4.4. Respect for Rights of Third Persons.

LAW FIRMS AND ASSOCIATIONS

5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers.
5.2. Responsibilities of a Subordinate Lawyer.
5.3. Responsibilities Regarding Nonlawyer Assistants.
5.4. Professional Independence of a Lawyer.
5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.
5.6. Restrictions on Right to Practice.

PUBLIC SERVICE

6.1. Voluntary Pro Bono Publico Service.
6.2. Accepting Appointments.
6.3. Membership in Legal Services Organization.
6.4. Law Reform Activities Affecting Client Interests.

ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) [Reserved]

(5) a lawyer may share legal fees as otherwise provided in Rule 7.2(b).

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII, § 14; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

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(e)(1) A lawyer shall not:

(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, during the period of suspension, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

(e)(2) The registration form provided for in Section (e)(1) shall include:

(i) the identity and bar roll number of the suspended attorney sought to be hired;

(ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney throughout the duration of employment or association;

(iii) a list of all duties and activities to be assigned to the suspended attorney during the period of employment or association;

(iv) the terms of employment of the suspended attorney, including method of compensation;

(v) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney; and

(vi) a statement by the employing attorney certifying that the order giving rise to the suspension of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney.

(e)(3) For purposes of this Rule, the practice of law shall include the following activities:

(i) holding oneself out as an attorney or lawyer authorized to practice law;

(ii) rendering legal consultation or advice to a client;

(iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;

(iv) appearing as a representative of the client at a deposition or other discovery matter;

(v) negotiating or transacting any matter for or on behalf of a client with third parties;

(vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

(e)(4) In addition, a suspended lawyer shall not receive, disburse or otherwise handle client funds.

(e)(5) Upon termination of the suspended attorney, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended and effective March 24, 2004; amended March 8, 2005, effective April 1, 2005.

Historical Notes

Application of Order of March 24, 2004. Part 2 of the Order of Supreme Court, dated March 24, 2004, amending Rule 5.5(c) [see Rule 5.5(e)(1)(i) in Order of March 8, 2005], provides:

"This rule change shall be applicable to any lawyer who is allowed to permanently resign from the practice of law in lieu of discipline through any order, judgment, or decree of the Court which becomes final after the effective date."

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Reenacted Jan. 20, 2004, effective March 1, 2004.

PUBLIC SERVICE

Rule 6.1. Voluntary Pro Bono Publico Service

Every lawyer should aspire to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this aspirational goal, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil

liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, legal system or the legal profession.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Reenacted Jan. 20, 2004, effective March 1, 2004.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the services of the lawyer's firm. For example, a communication violates this rule if it:

(i) Contains a material misrepresentation of fact or omits a fact necessary to make the communication, considered as a whole, not misleading; or

(ii) Contains a statement or implication that the outcome of any particular legal matter was not or will not be related to its facts or merits; or

(iii) Contains a statement or implication that the lawyer can influence unlawfully any court, tribunal or other public body or official; or

(iv) In the case of a bankruptcy matter, fails to state clearly that the matter will involve a bankruptcy proceeding; or

(v) Compares the lawyer's or the law firm's services with any other lawyer's services, unless the comparison can be factually substantiated; or

(vi) Contains an endorsement by a celebrity or public figure without disclosing that (A) the endorser is not a client of the lawyer or the firm, if such is the case, and (B) the endorser is being paid or otherwise compensated for his or her endorsement, if such is the case; or

(vii) Contains a visual portrayal of a client by a nonclient or a lawyer by a nonlawyer without disclosure that the depiction is a dramatization; or

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(viii) Contains misleading fee information. Every communication that contains information about the lawyer's fee shall be subject to the following requirements:

(A) Communications that state or indicate that no fee will be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.

(B) A lawyer who advertises a specific fee, hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days from the date it was last advertised; provided that for advertisements in print media published annually, the advertised fee shall be honored for a period not less than one year following initial publication.

(b) In determining whether a communication violates this rule, the communication shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

(c) A lawyer shall not accept a referral from any person, firm or entity whom the lawyer knows has engaged in any communication or solicitation relating to the referred matter that would violate these rules if the communication or solicitation were made by the lawyer.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 7.2. Advertising

A lawyer shall not give anything of value to a person for recommending the lawyer's services; provided, however, that

(a) a lawyer may pay the reasonable and customary costs of an advertisement or communication not in violation of these rules, and

(b) a lawyer may pay usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

Reenacted Jan. 20, 2004, effective March 1, 2004.

See Rule 7.1 of the Rules of Professional Conduct for example of a misleading communication in a bankruptcy matter.

Rule 7.3. Direct Contact with Prospective Clients

(a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) In instances where there is no family or prior professional relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these rules:

(i) A copy or recording of each such communication and a record of when and where it was used shall be kept by the lawyer using such communication for three (3) years after its last dissemination.

(ii) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.

(iii) In the case of a written communication:

(A) such communication shall not resemble a legal pleading, notice, contract or other legal document and shall not be delivered via registered mail, certified mail or other restricted form of delivery;

(B) the top of each page of such communication and the lower left corner of the face of the envelope in which the communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication, provided that if the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet; or in the case of an electronic mail communication, the subject line of the communication states that "This is an advertisement for legal services"; and

(C) if the communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, such communication shall not be initiated by the lawyer unless the accident or disaster occurred more than 30 days prior to the mailing of the communication.

(iv) In the case of a recorded communication, such communication shall be identified specifically as an advertisement at the beginning of the recording, at the end of the recording and on any envelope in which it is transmitted in accordance with the requirements of subparagraph (iii)(B) above.

(v) If the communication is prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of the intended recipient, such communication shall

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disclose how the lawyer obtained the information prompting the communication.

(c) Notwithstanding anything herein to the contrary, a lawyer shall not solicit professional employment from a prospective client through any means, even when not otherwise prohibited by these rules, if:

(i) the prospective client has made known to the lawyer a desire not to be solicited; or

(ii) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 7.4. Communication of Fields of Practice

A lawyer shall not state or imply that the lawyer is certified, or is a specialist or an expert, in a particular area of law, unless such certification, specialization or expertise has been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, logo, letterhead, professional designation, trade name or trademark that violates the provisions of these rules. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association. A lawyer shall not use a trade or fictitious name unless the name is the law firm name that also appears on the lawyer's letterhead, business cards, office signs and fee contracts and appears with the lawyer's signature on pleadings and other legal documents.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but the identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

(c) The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communication on its behalf during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession.

Reenacted Jan. 20, 2004, effective March 1, 2004.

MAINTAINING INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact;

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 8.2. Judicial and Legal officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel.

(b) A lawyer who knows that a judge has committed a violation of the applicable rules of judicial conduct that raises a question as to the judge's honesty, trustworthiness or fitness for office shall inform the Judiciary Commission. Complaints concerning the conduct of federal judges shall be filed with the appropriate federal authorities in accordance with federal laws and rules governing federal judicial conduct and disability.

(c) This rule does not require the disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program or while

serving as a member of the Ethics Advisory Service Committee.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended May 12, 2004, effective May 29, 2004.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or

(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 8.5. Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended March 8, 2005, effective April 1, 2005.

ARTICLE XVII. AMENDMENTS

Section 1. Amendments

These Articles of Incorporation, except Articles XIV, XV, and XVI, may be amended by a majority vote, by a secret mail ballot, of the members of this Association who actually vote. Such Amendments may be proposed by a majority vote of the House of Delegates or by a majority vote of the members of the Association at the Annual Meeting or on a written petition signed by one hundred (100) members and filed with the Secretary-Treasurer. The details for the balloting, including the time for voting and the contents of the ballot, shall be provided by the Board of Governors.

Articles XIV, XV, and XVI can be amended only by a majority vote of the House of Delegates, approved by the Supreme Court of Louisiana.

Amended Jan. 11, 1977, effective Jan. 26, 1977.

ARTICLE XVIII. PERSONAL LIABILITY OF MEMBERS OF THE BOARD OF GOVERNORS OR OFFICERS

No member of the Board of Governors or officer of this Association shall be personally liable to the Association or its members for monetary damages for breach of fiduciary duty as a member of the Board of Governors or as an officer, except to the limited extent provided by Louisiana corporation statutes.

Nothing contained herein shall be deemed to abrogate or diminish any exemption from liability or limitation of liability of the members of the Board of Governors or officers of this Association which is provided by law.

Added Jan. 10, 1991.

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ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through December 1, 2006

CLIENT-LAWYER RELATIONSHIP

Rule
1.8. Conflict of Interest: Current Clients: Specific Rules.

CLIENT-LAWYER RELATIONSHIP

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift, is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, or grandparent.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged

at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

(4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

(i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.

(ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.

(iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.

(iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.

(5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.

(i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.

(ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.

(iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.

(iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.

(v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.

(vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at

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the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.

(vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent, or the compensation is provided by contract with a third person such as an insurance contract or a prepaid legal service plan;

(2) there is no interference with the lawyer's independence or professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client, or a court approves a settlement in a certified class action. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) [Reserved].

(k) A lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents. An attorney may obtain a client's authorization to endorse and negotiate an instrument given in settlement of the client's claim, but only after the client has approved the settlement.

(*l*) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (k) that applies to any one of them shall apply to all of them.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended Jan. 4, 2006, effective April 1, 2006; amended and effective May 19, 2006.

Historical Notes

Part IV of the Supreme Court order of January 4, 2006, repealing and reenacting par. (e) of this Rule, provides:

"PART IV. These rule changes shall become effective on April 1, 2006, and shall apply prospectively only."

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DEF00197
PORT Exhibit 1001 (w)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975
Effective January 1, 1976

Including Amendments Received Through May 1, 2007

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-RULESUPDATES Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 2d and Louisiana Cases advance sheets.

Canon

1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.

COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion hy the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

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B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Jan. 13, 2005, effective Feb. 1, 2005.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

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CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective Feb. 12, 2003.

CANON 6
A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $500 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

(3) A judge shall file initial and annual disclosure statements with the Office of the Judicial Administrator of the Supreme Court of Louisiana if the judge derives directly, or through a legal entity of which he/she owns ten percent or more, anything of economic value, when that value exceeds $2,500, from a contract or subcontract which is related to a disaster or emergency declared by the governor, and when the judge knows or reasonably should know the contract or subcontract is or may be funded or reimbursed in whole or in part with federal funds.

Initial disclosure statements shall be due on or before March 1, 2006, or within 15 days after the judge or legal entity enters into such a contract or subcontract, whichever occurs later. Thereafter, annual disclosure statements are due on or before January 31st. Disclosure statements shall be subject to public inspection.

Disclosure statements shall contain the following information:

(a) The name, business address and office held by the judge;

(b) If through a legal entity,

(i) the name and business address of the legal entity;

(ii) the percentage of the judge's ownership interest in the legal entity;

(iii) the position, if any, held by the judge in the legal entity;

(c) The nature of the contract or subcontract, including:

(i) the amount of the contract or subcontract;

(ii) a description of the goods or services provided or to be provided pursuant to the contract or subcontract;

(d) The amount of income or value of anything of economic value to be derived or, if the actual amount is unknown at the time the statement is due, the amount reasonably expected to be derived by the judge from the contract or subcontract.

Any judge who is subject to the provisions of this subpart shall be required to file annual disclosure statements until a disclosure statement is filed after the completion of the contract or subcontract subject to disclosure, or until the judge vacates his/her judicial office, whichever occurs first. Annual disclosure statements shall not be required for the receipt of things of economic value pursuant to contracts or subcontracts entered into prior to the judge taking office; however, if a judge receives or reasonably expects to receive a thing of economic value otherwise required to be disclosed by this subpart pursuant to the renewal of such a contract or subcontract occurring after the judge takes office, the judge shall file a disclosure statement no later than 15 days after such renewal.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996; amended Dec. 6, 2005, effective Jan. 1, 2006; amended Jan. 10, 2006, effective Feb. 1, 2006.

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iii) while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participat-

ing in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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(ii) Failure to timely file the annual report or pay the annual fee will result in the suspension of the right to act as a legal consultant until such time as the report is filed and/or the fee is paid.

b. Such annual fee shall include annual dues as determined in accordance with Article V of the Articles of Incorporation of the Louisiana State Bar Association and the disciplinary assessment fee as determined in accordance with Supreme Court Rule XIX.

7. Affiliation with the Louisiana State Bar Association; Business Associations.

a. Subject to the limitations set forth in subsection 4, every person licensed to practice as a legal consultant shall be entitled and subject to:

(i) the rights and obligations set forth in the Rules of Professional Conduct or arising from the other conditions and requirements that apply to a regular member of the bar of this state under the Rules of the Supreme Court of Louisiana; and,

(ii) the rights and obligations of a regular member of the bar of this state with respect to:

(aa) affiliation in the same law firm with one or more members of the bar of this state, including by:

1. employing one or more members of the bar of this state;

2. being employed by one or more members of the bar of this state or by any partnership or professional law corporation which includes members of the bar of this state or which maintains an office in this state; and

3. being a partner in any partnership, shareholder in any professional law corporation, or member of a limited liability company which includes members of the bar of this state or which maintains an office in this state; and

(bb) attorney-client privilege, work-product privilege and similar professional privileges.

b. Notwithstanding paragraph a(i) of this subsection, a person licensed as a legal consultant is not required to comply with the minimum requirements of continuing legal education as mandated by Rule 1.1(b) of Article XVI of these Articles of Incorporation.

8. Revocation of License.

In the event the Supreme Court determines that a person licensed as a legal consultant no longer meets the requirements for licensure, it shall revoke the license granted to such person.

Adopted May 9, 1996, effective July 1, 1996.

Historical Notes

A prior § 11 of Article 14 of the Articles of Incorporation of the Louisiana State Bar Association was deleted.

Section 11 Appendix. Licensing of Legal Consultants in Foreign Law

An applicant who wishes to become licensed as a consultant in foreign law, and who wishes to remain so licensed, shall be required to submit proof of malpractice insurance with a minimum coverage of $500,000 per claim, or other guarantee of financial responsibility in like amount and in a form acceptable to the Clerk of this Court.

Adopted May 9, 1996, effective July 1, 1996.

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS [REPEALED]

§§ 1 to 16. Vacated and repealed effective April 1, 1990

Publisher's Note: See now Supreme Court Rule XIX.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through May 1, 2007

Rule

1.0. Terminology.

CLIENT-LAWYER RELATIONSHIP

1.1. Competence.
1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.
1.3. Diligence.
1.4. Communication.
1.5. Fees.
1.6. Confidentiality of Information.
1.7. Conflict of Interest: Current Clients.
1.8. Conflict of Interest: Current Clients: Specific Rules.

Rule

CLIENT-LAWYER RELATIONSHIP—Cont'd

1.9. Duties to Former Clients.
1.10. Imputation of Conflicts of Interest: General Rule.
1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees.
1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.
1.13. Organization as Client.
1.14. Client with Diminished Capacity.
1.15. Safekeeping Property.
1.16. Declining or Terminating Representation.
1.18. Duties to Prospective Client.

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LOUISIANA

RULES OF COURT

STATE

2008

INCLUDES RULES FOR LOUISIANA DISTRICT COURTS
AND JUVENILE COURTS, AND NUMBERING SYSTEM FOR
LOUISIANA FAMILY AND DOMESTIC RELATIONS PROCEEDINGS

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PORT Exhibit 1001 (x)

CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975
Effective January 1, 1976

Including Amendments Received Through May 15, 2008

Research Note

These rules may be searched electronically on Westlaw in the LA-RULES database; updates to these rules may be found on Westlaw in LA-RULESUPDATES. For search tips and a summary of database content, consult the Westlaw Scope Screens for each database.

Canon
1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Judge Shall Perform the Duties of Office Impartially and Diligently.
4. Quasi-Judicial Activities A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. Extra-Judicial Activities A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties.
6. A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances.
6. A Judge May Not Accept Compensation, Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value for Quasi-Judicial and Extra-Judicial Activities Except Under Restricted Circumstances; Reporting Requirements.
7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

Rule
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.
COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

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B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Jan. 13, 2005, effective Feb. 1, 2005.

CANON 3
A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be

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required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5
Extra-Judicial Activities
A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. **Avocational Activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective Feb. 12, 2003.

CANON 6

A Judge Shall Accept Compensation or Gifts for Quasi-Judicial and Extra-Judicial Activities Only Under Restricted Circumstances

Text of Canon 6 effective until January 1, 2009

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

B. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

C. Gifts. A judge, a judge's spouse, or a member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

D. Annual Reports.

(1) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $500 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(2) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before January 31st of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

(3) A judge shall file initial and annual disclosure statements with the Office of the Judicial Administrator of the Supreme Court of Louisiana if the judge derives directly, or through a legal entity of which he/she owns ten percent or more, anything of economic value, when that value exceeds $2,500, from a contract or subcontract which is related to a disaster

or emergency declared by the governor, and when the judge knows or reasonably should know the contract or subcontract is or may be funded or reimbursed in whole or in part with federal funds.

Initial disclosure statements shall be due on or before March 1, 2006, or within 15 days after the judge or legal entity enters into such a contract or subcontract, whichever occurs later. Thereafter, annual disclosure statements are due on or before January 31st. Disclosure statements shall be subject to public inspection.

Disclosure statements shall contain the following information:

(a) The name, business address and office held by the judge;

(b) If through a legal entity,

(i) the name and business address of the legal entity;

(ii) the percentage of the judge's ownership interest in the legal entity;

(iii) the position, if any, held by the judge in the legal entity;

(c) The nature of the contract or subcontract, including:

(i) the amount of the contract or subcontract;

(ii) a description of the goods or services provided or to be provided pursuant to the contract or subcontract;

(d) The amount of income or value of anything of economic value to be derived or, if the actual amount is unknown at the time the statement is due, the amount reasonably expected to be derived by the judge from the contract or subcontract.

Any judge who is subject to the provisions of this subpart shall be required to file annual disclosure statements until a disclosure statement is filed after the completion of the contract or subcontract subject to disclosure, or until the judge vacates his/her judicial office, whichever occurs first. Annual disclosure statements shall not be required for the receipt of things of economic value pursuant to contracts or subcontracts entered into prior to the judge taking office; however, if a judge receives or reasonably expects to receive a thing of economic value otherwise required to be disclosed by this subpart pursuant to the renewal of such a contract or subcontract occurring after the judge takes office, the judge shall file a disclosure statement no later than 15 days after such renewal.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996; amended Dec. 6, 2005, effective Jan. 1, 2006; amended Jan. 10, 2006, effective Feb. 1, 2006.

CANON 6. A Judge May Not Accept Compensation, Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value for Quasi-Judicial and Extra-Judicial Activities Except Under Restricted Circumstances; Reporting Requirements

Text of Canon 6 effective January 1, 2009

A. COMPENSATION AND EXPENSES

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

1. **Compensation.** Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

2. **Expenses.** Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

B. GIFTS, LOANS, BEQUESTS, BENEFITS, FAVORS OR OTHER THINGS OF VALUE

(1) A judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

(2) Except as provided in Canon 6B(3) and B(4) below, a judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

(3) If not in violation of Canon 6B(1), a judge may accept the following without reporting such acceptance:

(a) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(b) gifts, loans, bequests, benefits, favors or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge, or if the gift, bequest, benefit, favor or other thing of value is made in connection with a special occasion such as a wedding, anniversary or birthday and the gift is commensurate with the occasion and the relationship;

(c) ordinary social hospitality provided the total value of the food, drink, or refreshment given to a judge at any single event shall not exceed fifty dollars regardless of the number of persons giving food, drink or refreshment to the judge at a single event. The value of the food, drink or refreshment provided to the judge shall be determined by dividing the total cost of the food, drink and refreshment provided at the event by the total number of persons invited. Beginning on July 1, 2009, and on July first of each year thereafter, when there has been an increase in the unadjusted Consumer Price Index (CPI–U) (Food and Beverage) as published by the United

States Department of Labor, Bureau of Labor Statistics in January each year, the limit of fifty dollars for food, drink or refreshments shall be increased by the same percentage as the percentage by which that price index is increased. The amount of the increase shall be rounded off to the nearest dollar. The food, drink, or refreshment limit shall be promulgated to judges annually by the Supreme Court;

(d) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(e) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(f) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(g) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(h) gifts, awards or benefits associated with the business, profession, or other separate activity of a spouse or immediate family member residing in the judge's household, but that incidentally benefit the judge; or

(i) complimentary admission to a political event if in compliance with this Code of Judicial Conduct, Canon 7.

(4) If not in violation of Canon 6B(1), a judge may accept the following, and must report such acceptance, subject to Canon 6C(2)(a):

(a) gifts incidental to a public testimonial;

(b) invitations to the judge and the judge's spouse or guest to attend without charge:

(i) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(ii) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code of Judicial Conduct, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge;

(c) complimentary admission to a civic, nonprofit or educational event when the judge is a program honoree, is a speech presenter, or is a panel member; or

(d) any fishing trip, hunting trip, or golf outing only if such trip or outing is associated with a candidate's, elected official's or organization's fundraising event open to the general public.

(5) The provisions of Canon 6B(3)(c) shall not apply to a gathering held in conjunction with an event or meeting related to a local, regional, or national organization concerning the law, the legal system or the administration of justice, or a meeting of an organization of governmental officials or employees.

(6) A contribution to a judge's campaign committee organized pursuant to Canon 7D is not a gift for purposes of Canon 6.

C. ANNUAL REPORTING REQUIREMENTS:

(1) Compensation and Expenses.

(a) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $500 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(b) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before May 15th of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

(c) A judge shall file initial and annual disclosure statements with the Office of the Judicial Administrator of the Supreme Court of Louisiana if the judge derives directly, or through a legal entity of which he/she owns ten percent or more, anything of economic value, when that value exceeds $2,500, from a contract or subcontract which is related to a disaster or emergency declared by the governor, and when the judge knows or reasonably should know the contract or subcontract is or may be funded or reimbursed in whole or in part with federal funds.

Initial disclosure statements shall be due on or before March 1, 2006, or within 15 days after the judge or legal entity enters into such a contract or subcontract, whichever occurs later. Thereafter, annual disclosure statements are due on or before May 15th. Disclosure statements shall be subject to public inspection.

Disclosure statements shall contain the following information:

(i) The name, business address and office held by the judge;

(ii) If through a legal entity,

(1) the name and business address of the legal entity;

(2) the percentage of the judge's ownership interest in the legal entity;

(3) the position, if any, held by the judge in the legal entity;

(iii) The nature of the contract or subcontract, including:

(1) the amount of the contract or subcontract;

(2) a description of the goods or services provided or to be provided pursuant to the contract or subcontract;

(iv) The amount of income or value of anything of economic value to be derived or, if the actual amount is unknown at the time the statement is due, the amount reasonably expected to be derived by the judge from the contract or subcontract.

Any judge who is subject to the provisions of this subpart shall be required to file annual disclosure statements until a disclosure statement is filed after the completion of the contract or subcontract subject to disclosure, or until the judge vacates his/her judicial office, whichever occurs first. Annual disclosure statements shall not be required for the receipt of things of economic value pursuant to contracts or subcontracts entered into prior to the judge taking office; however, if a judge receives or reasonably expects to receive a thing of economic value otherwise required to be disclosed by this subpart pursuant to the renewal of such a contract or subcontract occurring after the judge takes office, the judge shall file a disclosure statement no later than 15 days after such renewal.

(2) Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value.

(a) When public reporting is required by Canon 6B(4), a judge shall publicly report annually all gifts, loans, bequests, benefits, favors or other things of value accepted by the judge when the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, exceeds $250.

(b) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before May 15th of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the description of any gift, loan, bequest, benefit, favor or other thing of value accepted.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996; amended Dec. 6, 2005, effective Jan. 1, 2006; amended Jan. 10, 2006, effective Feb. 1, 2006; amended March 26, 2008, effective Jan. 1, 2009.

Historical Notes

Senate Resolution No. 6 of the 2008 First Extraordinary Session provided:

"WHEREAS, Article V of the Louisiana Constitution of 1974 sets forth the powers and duties of the judicial branch of government; and

"WHEREAS, in such Article the state supreme court is vested with general supervisory jurisdiction over all other courts; and

"WHEREAS, the supreme court is further vested with exclusive original jurisdiction in judicial disciplinary proceedings; and

"WHEREAS, the judiciary commission is created to provide recommendations to the supreme court concerning discipline of judges; and

"WHEREAS, the supreme court, pursuant to its supervisory authority over all lower courts, has adopted the Code of Judicial Conduct; and

"WHEREAS, such Code of Judicial Conduct is binding on all judges, and violations of its canons can serve as the basis for disciplinary action; and

"WHEREAS, the supreme court has stated that the primary purpose of the Code of Judicial Conduct is to protect the public rather than to discipline judges (*In re Shea*, 815 So.2d 813, 815 (La. 2002)), and that the duty of the supreme court pursuant to its constitutional responsibility is to preserve the integrity of the bench for the benefit of the public 'by ensuring that all who don the black robe and serve as ministers of justice do not engage in public conduct which brings the judicial office into disrepute' (*In re Huckaby*, 656 So.2d 292, 298 (La. 1995)); and

"WHEREAS, judges are not presently included within the statutory requirements of the Code of Governmental Ethics and La. R.S. 42:1167 presently states, 'All judges, as defined by the Code of Judicial Conduct, shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission provided for in Article V, Section 25 of the Constitution of Louisiana.'; and

"WHEREAS, Canon 6 of the Code of Judicial Conduct requires judges to file with the supreme court certain annual reports and disclosure statements concerning compensation and expenses received in connection with any quasi-judicial activity; and

"WHEREAS, Canon 7 of the Code of Judicial Conduct provides generally that a judge or judicial candidate shall refrain from inappropriate political activity, and further sets forth certain duties and prohibitions for judges as to political conduct and activity, campaign conduct, campaign committees, and retention of campaign contributions; and

"WHEREAS, it would greatly benefit the public interest for the Code of Judicial Conduct to include financial disclosure standards and requirements for judges that are consistent with requirements for other elected officials set forth in the Code of Governmental Ethics; and

"WHEREAS, such consistency would strengthen the Code of Judicial Conduct and result in significant requirements to ensure the protection of the public and integrity of the judiciary in Louisiana.

"THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana Supreme Court to adopt the same financial disclosure standards for judges that are applicable to other elected officials in the Code of Governmental Ethics."

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should

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discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iii) while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than six months after any judicial election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the population of the judge's or judicial candidate's election district:

Population of Election District	Amount of Campaign Funds That May Be Retained
Below 25,000	$ 25,000
25,000–100,000	$ 50,000
100,001–200,000	$ 75,000
200,001–300,000	$100,000
300,001–400,000	$125,000
Over 400,000	$150,000

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non-Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a

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state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998.

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(ii) Failure to timely file the annual report or pay the annual fee will result in the suspension of the right to act as a legal consultant until such time as the report is filed and/or the fee is paid.

b. Such annual fee shall include annual dues as determined in accordance with Article V of the Articles of Incorporation of the Louisiana State Bar Association and the disciplinary assessment fee as determined in accordance with Supreme Court Rule XIX.

7. Affiliation with the Louisiana State Bar Association; Business Associations.

a. Subject to the limitations set forth in subsection 4, every person licensed to practice as a legal consultant shall be entitled and subject to:

(i) the rights and obligations set forth in the Rules of Professional Conduct or arising from the other conditions and requirements that apply to a regular member of the bar of this state under the Rules of the Supreme Court of Louisiana; and,

(ii) the rights and obligations of a regular member of the bar of this state with respect to:

(aa) affiliation in the same law firm with one or more members of the bar of this state, including by:

1. employing one or more members of the bar of this state;

2. being employed by one or more members of the bar of this state or by any partnership or professional law corporation which includes members of the bar of this state or which maintains an office in this state; and

3. being a partner in any partnership, shareholder in any professional law corporation, or member of a limited liability company which includes members of the bar of this state or which maintains an office in this state; and

(bb) attorney-client privilege, work-product privilege and similar professional privileges.

b. Notwithstanding paragraph a(i) of this subsection, a person licensed as a legal consultant is not required to comply with the minimum requirements of continuing legal education as mandated by Rule 1.1(b) of Article XVI of these Articles of Incorporation.

8. Revocation of License.

In the event the Supreme Court determines that a person licensed as a legal consultant no longer meets the requirements for licensure, it shall revoke the license granted to such person.

Adopted May 9, 1996, effective July 1, 1996.

Historical Notes

A prior § 11 of Article 14 of the Articles of Incorporation of the Louisiana State Bar Association was deleted.

Section 11 Appendix. Licensing of Legal Consultants in Foreign Law

An applicant who wishes to become licensed as a consultant in foreign law, and who wishes to remain so licensed, shall be required to submit proof of malpractice insurance with a minimum coverage of $500,000 per claim, or other guarantee of financial responsibility in like amount and in a form acceptable to the Clerk of this Court.

Adopted May 9, 1996, effective July 1, 1996.

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS [REPEALED]

§§ 1 to 16. Vacated and repealed effective April 1, 1990

Publisher's Note: See now Supreme Court Rule XIX.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through May 15, 2008

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

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CODE OF JUDICIAL CONDUCT

Adopted March 5, 1975
Effective January 1, 1976

Including Amendments Received Through May 15, 2009

Research Note

Use Westlaw to find cases citing a rule. Westlaw may also be used to search for specific terms or to update a rule; see the LA-RULES and LA-RULESUPDATES Scope Screens for further information.

Amendments to these rules are published, as received, in Southern Reporter 3d and Louisiana Cases advance sheets.

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7. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

Rule
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT.
COMMITTEE ON JUDICIAL ETHICS.

Adoption of Code

The following Canons, effective January 1, 1976, were adopted by the Supreme Court of Louisiana on March 5, 1975, to replace the Canons of Judicial Ethics adopted October 13, 1960.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence. Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

Commentary to Canon 1

The word "shall" is intended to impose binding obligations, the violation of which can result in disciplinary action.

When "should" is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgement that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject

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to the judge's direction and control, may also result in judicial discipline.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Jan. 13, 2005, effective Feb. 1, 2005.

CANON 3

A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. **Adjudicative Responsibilities.**

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties. Judges of appellate courts shall also avoid all actions or language which might indicate to counsel, litigants or any member of the public, the particular member of the court to whom a case is allotted or assigned for any purpose. Similar circumspection should be exacted on the part of court officers, clerks and secretaries.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from

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explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

An appellate court may permit broadcasting, televising, recording, and taking photographs of public judicial proceedings in the courtrooms of appellate courts in accordance with the guidelines set forth in an appendix to this Canon, subject, however, to the authority of each court and the presiding judge of each court or panel to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Amended April 23, 1985; December 3, 1990; amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective March 13, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005.

APPENDIX TO CANON 3

Guidelines for Extended Media Coverage of Proceedings in Appellate Courtrooms

I. As used in these guidelines,

A. "Extended coverage" means any recording or broadcasting by the news media of court proceedings using television, radio, photographic or recording equipment.

B. "Presiding Judge" means the Chief Justice of the Supreme Court of Louisiana, the Chief Judge of a Court of Appeal, or the senior judge of a panel of which the Chief Justice or Chief Judge is not a member.

C. "Proceeding" means any hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

D. "Party" means a named litigant of record who has appeared in the case, and includes a party's counsel of record.

E. "Media" means legitimate news gathering and reporting agencies and their representatives.

F. "Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

II. All extended media coverage of court proceedings shall be governed by the principle that the decorum and dignity of the court, the courtroom and the judicial process will be maintained at all times. Resolution of any question of coverage or procedure not specifically addressed in this section will be guided by this overriding principle.

III. A. The consent or approval of parties to extended coverage is not required. Parties may object to extended coverage by filing a written objection stating the reasons therefor with the clerk of court at least 10 days prior to the date of the proceedings. Upon objection by a party, or on the court's own motion, the presiding judge may prohibit or limit extended coverage of a proceeding.

B. Extended coverage shall not be permitted in any proceeding which by law must or may be held in private.

C. The decision of the presiding judge on any question of coverage shall be final and shall not be subject to review by any other court.

IV. Extended coverage of a proceeding shall not be permitted unless notice of intention to provide extended coverage of a proceeding is given by the media to the clerk of court at least 20 days in advance of the proceeding, provided that only reasonable notice shall be required for coverage of expedited proceedings not regularly calendared.

V. Extended coverage of court proceedings may be provided by news media agencies and their representatives. Film, videotape, photographs, and audio reproduction shall not be used for commercial or political advertising purposes. Such use of these materials will be regarded as an unlawful interference with the judicial process.

VI. Extended coverage of investitive or ceremonial proceedings at variance with these guidelines may be authorized by the court.

VII. When extended coverage is permitted, all media representatives shall have equally the right to provide coverage. When extended coverage is to be provided by more than one media representative, the media collectively should designate one representative to coordinate with the court all matters dealing with extended coverage. Any pooling arrangements among the media required by the limitations and restrictions on equipment and personnel contained in these guidelines shall be the sole responsibility of the media and must be made in advance of the court proceedings to be covered. Judges and court personnel will not mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. If pooling arrangements cannot be made or if there are unresolved media disputes, the presiding judge may deny extended coverage of proceedings.

VIII. A. No more than two portable television cameras, each operated by no more than one camera person and positioned as unobtrusively as possible at locations approved by the court, shall be permitted to be physically in the courtroom. Only television equipment which does not produce light or distracting sound will be permitted. Videotape recording equipment which is not a component part of a television camera shall, whenever possible, be located in an area outside the courtroom.

B. No artificial lighting device of any kind shall be employed in connection with the television camera. With the approval of the court, modifications and additions to existing courtroom lighting may be made provided such modifications or additions are installed and maintained without public expense. Multiple video/audio feeds may be permitted but must be provided by a video/audio distribution system, furnished by the media, located outside the courtroom.

IX. A. No more than one still photographer, using not more than two still cameras with not more than two lenses for each camera without flash or other artificial light, shall be permitted to be physically in the courtroom. Still cameras must not produce distracting sound and should produce no greater sound than the Leica M Series Rangefinder camera. Motorized film advance systems will not be permitted.

B. The photographer shall be positioned in a place designated by the presiding judge and remain in that area except when the proceeding is in recess. Changing of lenses or film will only be done during a recess.

X. Only one audio system for radio broadcast purposes will be permitted in the courtroom. Audio pickup should be made from existing audio systems in the courtroom whenever possible. If no technically suitable audio system exists in the courtroom, microphones and related wiring shall be permitted but must be unobtrusive and located in places designated in advance by the presiding judge. Multiple radio feeds rather than a pooling system may be permitted but must be provided by an audio distribution system, provided by the media, located outside the courtroom.

XI. When extended media coverage is authorized, individual journalists may bring tape recorders into the courtroom and use them to record proceedings so long as they do not cause any distraction. Journalists using tape recorders may sit at any place in the audience portion of the courtroom, but must keep their tape recorder on their person at all times. Changing of tape cassettes during proceedings is not permitted and should only be done during a recess.

XII. All camera and audio equipment must be in position at least 15 minutes before the start of the proceedings and can only be moved or removed after the proceedings are over or during a recess. Television camera persons and still photographers must remain in their designated area and are not permitted to move about the courtroom. Television cameras and radio broadcast equipment, once in position, may not be moved during the proceedings. Movement by television and still photographers should be held to a minimum and in no way should be distracting or call undue attention to the operators.

XIII. Camera and audio equipment authorized by these guidelines shall not be operated during a recess in a court proceeding. Extended coverage in the judicial area of a courthouse or other court facility is limited to proceedings in the courtroom in the presence of the presiding judge.

XIV. The dignity and decorum of the court must be maintained at all times during extended media coverage activities. Court customs, including appropriate dress, must be followed.

XV. The confidentiality of the attorney/client relationship must be protected. Therefore, there will be no audio recording, radio, television, or tape-recording, made or broadcast of any conference between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge when held at the bench, or of proceedings held in chambers. No parabolic microphones shall be used.

Added April 23, 1985. Amended and effective June 3, 1993.

CANON 4
Quasi-Judicial Activities
A Judge May Engage in Quasi-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not impair, limit or restrict his or her capacity to decide impartially any issue that the judge knows is likely to come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds for such an organization or agency, or allow his or her name to be used in the solicitation of funds. A judge may make recommendations to the public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

CANON 5

Extra-Judicial Activities

A Judge Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if the judge knows, or should know, it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. However, it shall not be a violation of this Canon for a judge to privately solicit funds for the judge's local church from a local church member. A judge should not be a fund-raising speaker or the guest of honor at an organization's fund- raising events, but may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

C. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity but shall not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which he or she is disqualified. As soon as a judge can do so without serious financial detriment, he or she shall divest himself or herself of investments and other financial interests that might require frequent recusation.

(4) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

E. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her county, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective Feb. 12, 2003.

CANON 6

A Judge May Not Accept Compensation, Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value for Quasi-Judicial and Extra-Judicial Activities Except Under Restricted Circumstances; Reporting Requirements

A. Compensation and Expenses

A judge may receive compensation and expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

1. Compensation. Compensation for quasi-judicial activities shall not exceed a reasonable amount. Compensation for extra-judicial activities shall not exceed what a person who is not a judge would receive for the same activity.

2. Expenses. Expenses shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the

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occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

B. Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value

(1) A judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct.

(2) Except as provided in Canon 6B(3) and B(4) below, a judge shall not accept, directly or indirectly, any gifts, loans, bequests, benefits, favors or other things of value if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

(3) If not in violation of Canon 6B(1), a judge may accept the following without reporting such acceptance:

(a) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(b) gifts, loans, bequests, benefits, favors or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge, or if the gift, bequest, benefit, favor or other thing of value is made in connection with a special occasion such as a wedding, anniversary or birthday and the gift is commensurate with the occasion and the relationship;

(c) ordinary social hospitality provided the total value of the food, drink, or refreshment given to a judge at any single event shall not exceed fifty dollars regardless of the number of persons giving food, drink or refreshment to the judge at a single event. The value of the food, drink or refreshment provided to the judge shall be determined by dividing the total cost of the food, drink and refreshment provided at the event by the total number of persons invited, whether formally or informally, and which is communicated in any manner or form, to the event. For purposes of this Canon 6B(3)(c), "event" means a single activity, occasion, reception, meal or meeting at a given place and time. Beginning on July 1, 2009, and on July first of each year thereafter, when there has been an increase in the unadjusted Consumer Price Index (CPI–U) (Food and Beverage) as published by the United States Department of Labor, Bureau of Labor Statistics in January each year, the limit of fifty dollars for food, drink or refreshments shall be increased by the same percentage as the percentage by which that price index is increased. The amount of the increase shall be rounded off to the nearest dollar. The food, drink, or refreshment limit shall be promulgated to judges annually by the Supreme Court;

(d) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(e) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(f) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(g) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(h) gifts, awards or benefits associated with the business, profession, or other separate activity of a spouse or immediate family member residing in the judge's household, but that incidentally benefit the judge; or

(i) complimentary admission to a political event if in compliance with this Code of Judicial Conduct, Canon 7.

(4) If not in violation of Canon 6B(1), a judge may accept the following, and must report such acceptance, subject to Canon 6C(2)(a):

(a) gifts incidental to a public testimonial;

(b) invitations to the judge and the judge's spouse or guest to attend without charge:

(i) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(ii) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code of Judicial Conduct, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge;

(c) complimentary admission to a civic, nonprofit or educational event when the judge is a program honoree, is giving a speech at the event, or is a panel member for a discussion occurring at the event.

(5) The provisions of Canon 6B(3)(c) shall not apply to a gathering held in conjunction with an event or meeting related to a local, regional, or national organization concerning the law, the legal system or the administration of justice, or a meeting of an organization of governmental officials or employees.

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(6) A contribution to a judge's campaign committee organized pursuant to Canon 7D is not a gift for purposes of Canon 6.

C. Annual Reporting Requirements

(1) Compensation and Expenses.

(a) A judge shall report annually all compensation and expenses received in connection with any quasi-judicial activity of the judge when the amount received for any such quasi-judicial activity exceeds $500 and is paid for by any individual, professional organization or association, including law-related groups, or any business organization or association.

(b) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before May 15th of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the nature of the quasi-judicial activity.

(c) A judge shall file initial and annual disclosure statements with the Office of the Judicial Administrator of the Supreme Court of Louisiana if the judge derives directly, or through a legal entity of which he/she owns ten percent or more, anything of economic value, when that value exceeds $2,500, from a contract or subcontract which is related to a disaster or emergency declared by the governor, and when the judge knows or reasonably should know the contract or subcontract is or may be funded or reimbursed in whole or in part with federal funds.

Initial disclosure statements shall be due on or before March 1, 2006, or within 15 days after the judge or legal entity enters into such a contract or subcontract, whichever occurs later. Thereafter, annual disclosure statements are due on or before May 15th. Disclosure statements shall be subject to public inspection.

Disclosure statements shall contain the following information:

(i) The name, business address and office held by the judge;

(ii) If through a legal entity,

(1) the name and business address of the legal entity;

(2) the percentage of the judge's ownership interest in the legal entity;

(3) the position, if any, held by the judge in the legal entity;

(iii) The nature of the contract or subcontract, including:

(1) the amount of the contract or subcontract;

(2) a description of the goods or services provided or to be provided pursuant to the contract or subcontract;

(iv) The amount of income or value of anything of economic value to be derived or, if the actual amount is unknown at the time the statement is due, the amount reasonably expected to be derived by the judge from the contract or subcontract.

Any judge who is subject to the provisions of this subpart shall be required to file annual disclosure statements until a disclosure statement is filed after the completion of the contract or subcontract subject to disclosure, or until the judge vacates his/her judicial office, whichever occurs first. Annual disclosure statements shall not be required for the receipt of things of economic value pursuant to contracts or subcontracts entered into prior to the judge taking office; however, if a judge receives or reasonably expects to receive a thing of economic value otherwise required to be disclosed by this subpart pursuant to the renewal of such a contract or subcontract occurring after the judge takes office, the judge shall file a disclosure statement no later than 15 days after such renewal.

(2) Gifts, Loans, Bequests, Benefits, Favors or Other Things of Value.

(a) When public reporting is required by Canon 6B(4), a judge shall publicly report annually all gifts, loans, bequests, benefits, favors or other things of value accepted by the judge when the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, exceeds $250.

(b) The judge's report shall be filed in the Office of the Judicial Administrator of the Supreme Court of Louisiana on or before May 15th of each year, for the preceding calendar year, and the report shall be subject to public inspection. In the report the judge shall list the name of the payor/donor, the date, the place and the description of any gift, loan, bequest, benefit, favor or other thing of value accepted.

Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended Nov. 11, 1996, effective July 8, 1996; amended Dec. 6, 2005, effective Jan. 1, 2006; amended Jan. 10, 2006, effective Feb. 1, 2006; amended March 26, 2008, effective Jan. 1, 2009; amended Dec. 17, 2008, effective Jan. 1, 2009.

Historical Notes

Senate Resolution No. 6 of the 2008 First Extraordinary Session provided:

"WHEREAS, Article V of the Louisiana Constitution of 1974 sets forth the powers and duties of the judicial branch of government; and

"WHEREAS, in such Article the state supreme court is vested with general supervisory jurisdiction over all other courts; and

"WHEREAS, the supreme court is further vested with exclusive original jurisdiction in judicial disciplinary proceedings; and

"WHEREAS, the judiciary commission is created to provide recommendations to the supreme court concerning discipline of judges; and

"WHEREAS, the supreme court, pursuant to its supervisory authority over all lower courts, has adopted the Code of Judicial Conduct; and

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"WHEREAS, such Code of Judicial Conduct is binding on all judges, and violations of its canons can serve as the basis for disciplinary action; and

"WHEREAS, the supreme court has stated that the primary purpose of the Code of Judicial Conduct is to protect the public rather than to discipline judges (*In re Shea*, 815 So.2d 813, 815 (La. 2002)), and that the duty of the supreme court pursuant to its constitutional responsibility is to preserve the integrity of the bench for the benefit of the public 'by ensuring that all who don the black robe and serve as ministers of justice do not engage in public conduct which brings the judicial office into disrepute' (*In re Huckaby*, 656 So.2d 292, 298 (La. 1995)); and

"WHEREAS, judges are not presently included within the statutory requirements of the Code of Governmental Ethics and La. R.S. 42:1167 presently states, 'All judges, as defined by the Code of Judicial Conduct, shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission provided for in Article V, Section 25 of the Constitution of Louisiana.'; and

"WHEREAS, Canon 6 of the Code of Judicial Conduct requires judges to file with the supreme court certain annual reports and disclosure statements concerning compensation and expenses received in connection with any quasi-judicial activity; and

"WHEREAS, Canon 7 of the Code of Judicial Conduct provides generally that a judge or judicial candidate shall refrain from inappropriate political activity, and further sets forth certain duties and prohibitions for judges as to political conduct and activity, campaign conduct, campaign committees, and retention of campaign contributions; and

"WHEREAS, it would greatly benefit the public interest for the Code of Judicial Conduct to include financial disclosure standards and requirements for judges that are consistent with requirements for other elected officials set forth in the Code of Governmental Ethics; and

"WHEREAS, such consistency would strengthen the Code of Judicial Conduct and result in significant requirements to ensure the protection of the public and integrity of the judiciary in Louisiana.

"THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana Supreme Court to adopt the same financial disclosure standards for judges that are applicable to other elected officials in the Code of Governmental Ethics."

CANON 7

A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) A judge or judicial candidate shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization or a candidate for public office;

(d) except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions.

B. Campaign Conduct.

(1) A judge or judicial candidate:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and should encourage the members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and should discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under this Canon;

(c) except to the extent permitted by these Canons, shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Canon;

(d) shall not:

(i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent; or

(iii) while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 7B(1)(d).

C. A Judge or a Judicial Candidate May:

(1) At any time

(a) attend political gatherings;

(b) identify himself or herself as a member of a political party;

(2) During his or her candidacy

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television or other media advertisements supporting his or her candidacy;

(c) distribute pamphlets or other promotional campaign literature supporting his or her candidacy;

(d) contribute to a political organization and/or be included on a political ticket or endorsement.

D. Campaign Committees

(1) A judge or judicial candidate shall not personally solicit or accept campaign contributions. A judge or judicial candidate may personally solicit publicly stated support.

(2) A candidate may also establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expendi-

ture of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. However, no undue pressure or coercion may be applied in such solicitation.

(3) Such committees are not prohibited from soliciting or accepting campaign contributions or public support from lawyers. A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted.

(4) A candidate shall not use or permit the use of campaign contributions except as provided by law.

E. Retention of Campaign Contributions. Not later than one year after the beginning of the term of judicial office following an election in which a judge or judicial candidate participates as a contestant, the judge or judicial candidate shall divest himself or herself of any unused campaign funds, in excess of the amount listed below, by pro rata refund to the campaign contributors or by donation to a charitable organization. The judge or judicial candidate may retain campaign funds in the following amounts proportionate to the classification of the office to which the judge or judicial candidate seeks election:

Class of Judicial Office	Amount of Campaign Funds That May Be Retained
Major Office	$300,000
District Office	$200,000
Other Office	$100,000

"Major Office" means the following offices: justice of the supreme court; court of appeal judge; or any district court, family court, or juvenile court judge in a judicial district comprised of a single parish with a population in excess of two hundred fifty thousand persons as determined by the most recently published decennial federal census.

"District Office" means the following offices, but shall not include any Major Office:

(a) The offices of a district, juvenile, or family court judge (except in a judicial district comprised of a single parish with a population in excess of two hundred fifty thousand persons as determined by the most recently published decennial federal census), parish court judge, city court judge, municipal court judge and traffic court judge; or

(b) A justice of the peace in a judicial district comprised of a single parish with a population in excess of two hundred fifty thousand persons as determined by the most recently published decennial federal census.

"Other Office" shall mean any judicial office that is not a Major Office or a District Office.

F. Other Political Activity. A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

G. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(a) and (b) of the Louisiana Rules of Professional Conduct.

H. Definition of Candidate. A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever occurs first. The term "candidate" has the same meaning when applied to a judge seeking election to judicial or non-judicial office.

I. Candidacy for Non–Judicial Office. A judge shall resign his or her office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

Amended June 28, 1983; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended and effective July 1, 1997; amended March 13, 2002, effective April 15, 2002; amended Jan. 13, 2005, effective Feb. 1, 2005; amended June 26, 2008, effective Aug. 1, 2008.

Commentary to Canon 7 (2008)

A judge or judicial candidate's campaign committee, but not the judge or judicial candidate, may send thank you notes to the judge or judicial candidate's campaign contributors.

Court Commentary Regarding 2002 Amendment to Canon 7

The 2002 amendment to Canon 7B(1)(d) of the Code of Judicial Conduct, concerning public comments about pending or impending proceedings, is not intended to apply to in-court comments by lawyer candidates, or comments regarding a case or proceeding that the lawyer candidate is participating in. Comments by a lawyer candidate regarding a proceeding that the lawyer candidate is participating in, or a proceeding in which an associate of the lawyer candidate is participating in, are governed by Rule 3.6 of the Louisiana Rules of Professional Conduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All elected judges and anyone, whether or not a lawyer, who is an officer of a court of record performing judicial functions, including an officer such as a judge ad hoc, judge pro tempore, referee, special master, court commissioner, judicially appointed hearing officer, or magistrate, and anyone who is a justice of the peace, is a judge for the purpose of this Code. All judges shall comply with this Code.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

A part-time judge:

(1) is exempt from Canons 5C(2), 5D, and 5E;

(2) shall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

B. Pro Tempore and Ad Hoc Judges. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge ad hoc is a person who is appointed to act with regard to a specific case or cases.

(1) While acting as such, a judge pro tempore or ad hoc is not required to comply with Canons 5C(2), 5C(3), 5D, and 5E.

(2) A person who has been a judge ad hoc or judge pro tempore shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge is not governed by the provisions of this Code, except when sitting by assignment, and then the judge shall be subject to the rules applicable to judges pro tempore and ad hoc.

D. Judicially Appointed Hearing Officers. Judicially appointed hearing officers are required to comply with all canons of the Code except Canons 5C(2), 5D, and 5E.

Amended Oct. 29, 1982; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996.

COMMITTEE ON JUDICIAL ETHICS

To the end that these canons may be properly interpreted, and in order to provide a forum to receive inquiries from members of the judiciary related to the interpretation of these canons, the Supreme Court Committee on Judicial Ethics is hereby created. The function of this Committee shall be limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge.

The Committee shall consist of eleven members, as follows:

(a) The Chief Justice and one other member of the Supreme Court;

(b) The Chairperson of the Conference of Court of Appeal Judges and one other Court of Appeal Judge;

(c) The President of the District Judges Association and two other District Judges;

(d) The President of the City Judges Association;

(e) One juvenile or family court judge;

(f) The Judicial Administrator; and

(g) The President of the Louisiana State Bar Association.

The members of said Committee shall be selected and appointed in the following manner and for the terms indicated:

(a) The Chief Justice of the Supreme Court shall always be a member and shall be chairperson during his or her term of office as Chief Justice;

(b) The Supreme Court shall select an Associate Justice who shall serve for a term of two years;

(c) The Supreme Court shall select one district court judge and one juvenile or family court judge who shall serve for terms of two years;

(d) The Conference of Court of Appeal Judges shall select one member to serve on the Committee for two years;

(e) The District Judges Association shall select one member to serve on the Committee for two years;

(f) The Chairperson of the Conference of Court of Appeal Judges, the President of the District Judges Association, the President of the City Judges Association, the Judicial Administrator, and the President of the Louisiana State Bar Association shall, ex officio, be members of the Committee and shall serve during their respective terms of office.

The Judicial Administrator shall be Secretary of the Committee. The Committee shall make its own rules and select members to serve in such other offices as it creates.

The Committee shall act upon all inquiries as promptly as the nature of the case requires.

Amended Oct. 31, 1975, effective Jan. 1, 1976; Amended and effective June 3, 1993; amended July 3, 1996, effective July 8, 1996; amended May 28, 1998, effective July 1, 1998

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b. Such annual fee shall include annual dues as determined in accordance with Article V of the Articles of Incorporation of the Louisiana State Bar Association and the disciplinary assessment fee as determined in accordance with Supreme Court Rule XIX.

7. Affiliation with the Louisiana State Bar Association; Business Associations.

a. Subject to the limitations set forth in subsection 4, every person licensed to practice as a legal consultant shall be entitled and subject to:

(i) the rights and obligations set forth in the Rules of Professional Conduct or arising from the other conditions and requirements that apply to a regular member of the bar of this state under the Rules of the Supreme Court of Louisiana; and,

(ii) the rights and obligations of a regular member of the bar of this state with respect to:

(aa) affiliation in the same law firm with one or more members of the bar of this state, including by:

1. employing one or more members of the bar of this state;

2. being employed by one or more members of the bar of this state or by any partnership or professional law corporation which includes members of the bar of this state or which maintains an office in this state; and

3. being a partner in any partnership, shareholder in any professional law corporation, or member of a limited liability company which includes members of the bar of this state or which maintains an office in this state; and

(bb) attorney-client privilege, work-product privilege and similar professional privileges.

b. Notwithstanding paragraph a(i) of this subsection, a person licensed as a legal consultant is not required to comply with the minimum requirements of continuing legal education as mandated by Rule 1.1(b) of Article XVI of these Articles of Incorporation.

8. Revocation of License.

In the event the Supreme Court determines that a person licensed as a legal consultant no longer meets the requirements for licensure, it shall revoke the license granted to such person.

Adopted May 9, 1996, effective July 1, 1996.

Historical Notes

A prior § 11 of Article 14 of the Articles of Incorporation of the Louisiana State Bar Association was deleted.

Section 11 Appendix. Licensing of Legal Consultants in Foreign Law

An applicant who wishes to become licensed as a consultant in foreign law, and who wishes to remain so licensed, shall be required to submit proof of malpractice insurance with a minimum coverage of $500,000 per claim, or other guarantee of financial responsibility in like amount and in a form acceptable to the Clerk of this Court.

Adopted May 9, 1996, effective July 1, 1996.

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS [REPEALED]

§§ 1 to 16. Vacated and repealed effective April 1, 1990

Publisher's Note: See now Supreme Court Rule XIX.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through May 15, 2009

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Effective January 1, 1987

Including Amendments Received Through March 1, 1994

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CLIENT-LAWYER RELATIONSHIP

RULE 1.1 COMPETENCE

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer is required to comply with the minimum requirements of continuing legal education as prescribed by Louisiana Supreme Court rule.

RULE 1.2 SCOPE OF REPRESENTATION

(a) Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to

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make a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer knows that a client expects assistance prohibited by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.

RULE 1.5 FEES

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) The division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) The client is advised of and does not object to the participation of all the lawyers involved; and

(3) The total fee is reasonable.

(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(6). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expendi-

ture, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) The fee under Rule 1.5(f)(1), (2), or (3) must be reasonable under the circumstances, and the contract between the lawyer and the client regarding the fee should preferably be in writing and should specify the basis on which fee payments are to be made.

(6) When the client pays the lawyer a fixed fee or a minimum fee for particular services to be rendered in the future under Rule 1.5(f)(2) and the funds are placed in the lawyer's operating account and a fee dispute subsequently arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of the fee, if any. If the lawyer and the client cannot agree on the amount of unearned fee, the lawyer shall immediately refund to the client the amount, if any, that the parties agree has not been earned, and the lawyer shall deposit into a trust account an amount which represents the portion of the fee which is reasonably in dispute. The funds shall be held in the trust account until the dispute is resolved, and the lawyer may not hold the disputed portion of the funds to coerce a client into accepting the lawyer's contentions. The lawyer should also suggest means for a prompt resolution of the dispute such as the Louisiana State Bar Association Fee Dispute Program or other similar arbitration.

Amended effective Sept. 1, 1992.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in Paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) To prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

Loyalty is an essential element in the lawyer's relationship to a client. Therefore:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless;

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS

As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. Furthermore, a lawyer may not exploit his representation of a client or information relating to the representation to the client's disadvantage. Examples of violations include, but are not limited to, the following:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless;

(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) The client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) The client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) The client consents after consultation, or the compensation is provided by contract with a third person such as an insurance contract or a prepaid legal service plan.

(2) There is no interference with the lawyer's independent or professional judgment or with the client-lawyer relationship; and

(3) Information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) Acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) Contract with a client for a reasonable contingent fee in a civil case.

RULE 1.9 CONFLICT OF INTEREST: FORMER CLIENT

A lawyer who has formerly represented a client in a matter shall not thereafter;

(a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9, or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

Amended Jan. 12, 1988.

RULE 1.11 SUCCESSIVE GOVERNMENT AND PRIVATE EMPLOYMENT

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) The disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) Participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(d) As used in this rule, the term "matter" includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

RULE 1.12 FORMER JUDGE, ARBITRATOR OR LAW CLERK

(a) Except as stated in Paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator or law clerk to such a person, unless all parties to the proceeding consent after disclosure.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator.

(c) If a lawyer is disqualified by Paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) The disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

RULE 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) Asking reconsideration of the matter;

(2) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) Referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

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(c) If, despite the lawyer's efforts in accordance with Paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

RULE 1.14 CLIENT UNDER A DISABILITY

(a) When a client's ability to make adequate decisions in connection with the representation is impaired, for whatever reason, the lawyer must still treat the client as he would any other client unless it becomes apparent that the client's ability to participate in the decision making process is so impaired as to be unreliable. In such a case, when the lawyer reasonably believes that the client cannot act in his own best interest, the lawyer may seek the appointment of a curator, tutor or other legal representative or take such other protective action as may appear appropriate under the circumstances.

Where the lawyer represents a client through a legal representative, the client remains the subject of the representation for purposes of determining whose best interest should be protected.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

RULE 1.15 SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a bank or similar institution in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions:

(1) No earnings from such an account shall be made available to a lawyer or firm.

(2) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time.

(3) An interest-bearing trust account shall be established with any bank or savings and loan association or credit union authorized by federal or state law to do business in Louisiana and insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(4) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors.

(5) Lawyers or law firms depositing client funds in a trust savings account shall direct the depository institution:

A. To remit interest or dividend, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

B. To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

C. To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied,

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and the average account balance of the period for which the report is made.

Amended effective Jan. 1, 1991

IOLTA Rules

Effective January 1, 1991

1. The IOLTA program shall be a mandatory program requiring the participation by attorneys and law firms, whether proprietorships, partnerships or professional corporations.

2. The program shall apply to all clients of the participating attorneys or firms whose funds on deposit are either nominal in amount or to be held for a short period of time.

3. The following principles shall apply to clients' funds which are held by attorneys and firms.

a. No earnings on the IOLTA accounts may be made available to or utilized by an attorney or law firm.

b. Upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive.

c. Clients' funds which are nominal in amount or to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account with the interest (net of any service charge or fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

d. In determining whether a client's funds are nominal in amount, the lawyer or law firm shall take into consideration the following factors:

(1) The amount of interest which the funds would reasonably be expected to earn during the period they are to be deposited;

(2) The lawyer's cost to establish and administer the account, including the cost of preparing any required tax reports for interest accruing to a client's benefit; and

(3) The capability of financial institutions to calculate and pay interest to individual clients.

The determination of whether funds to be invested could be utilized to provide a positive net return to the client rests in the sound judgment of each attorney or law firm. In making the determination, the attorney or law firm may assume that $50 is a reasonable estimate of the minimum amount of interest that a segregated trust account for an individual client must generate to be practical in light of the costs involved in earning or accounting for any such income.

e. Although notification to clients whose funds are nominal in amount or to be held for a short period of time is not required, many attorneys may want to notify their clients of their participation in the program in some fashion. There is no impropriety in an attorney for the firm advising all clients of the members of the firm's advancing the administration of justice in Louisiana beyond their individual abilities in conjunction with other public-spirited members of their profession. In fact, it is recommended that this be done. Participation in the program will require communication to an authorized financial institution.

4. The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest income derived from trust accounts in the IOLTA program. Interest earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:

a. to provide legal services to the indigent and to the mentally disabled;

b. to provide law-related educational programs for the public;

c. to study and support improvements to the administration of justice; and

d. for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.

5. The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses, and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

Adopted effective Jan. 1, 1991.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in Paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the rules of professional conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in Paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) The client has used the lawyer's services to perpetrate a crime or fraud;

(3) A client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) Other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

COUNSELOR

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

RULE 2.2 INTERMEDIARY

(a) A lawyer may act as intermediary between clients if:

(1) The lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) The lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) The lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in Paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) The lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) The client consents after consultation.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

ADVOCATE

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so in good faith, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) Make a false statement of material fact or law to a tribunal;

(2) Conceal or knowingly fail to disclose that which he is required by law to reveal; however, if a lawyer discovers that his client has perpetrated a fraud on a tribunal, he shall promptly call on his client to rectify same and, if the client shall refuse to do so or be unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal;

(3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in Paragraph (a)(1) and (3) continue to the end of the hearing or proceeding. The duties stated in Paragraph (a)(2) and (4) are unlimited in time and apply, even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Amended Jan. 12, 1988.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) The person is a relative or an employee or other agent of a client, and

(2) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) Communicate ex parte with such a person except as permitted by law; or

(c) Engage in conduct intended to disrupt a tribunal.

RULE 3.6 TRIAL PUBLICITY

(a) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) A statement referred to in Paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement shall include, but not be limited to:

(1) The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) The fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) Notwithstanding Paragraphs (a) and (b)(1–5), a lawyer involved in the investigation or litigation of a matter may state without elaboration:

(1) The general nature of the claim or defense;

(2) The information contained in a public record;

(3) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) In a criminal case:

(i) The identity, residence, occupation and family status of the accused;

(ii) If the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) The fact, time and place of arrest; and

(iv) The identity of investigating and arresting officers or agencies and the length of the investigation.

RULE 3.7 LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in hich the lawyer is likely to be a necessary witness xcept where:

(1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of gal services rendered in the case; or

(3) Disqualification of the lawyer would work subantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which iother lawyer in the lawyer's firm is likely to be lled as a witness unless precluded from doing so by le 1.7 or Rule 1.9.

(c) If, after undertaking employment in contemated or pending litigation, a lawyer learns or it is vious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6; and

[*Publisher's Note: By Order dated December 16, 1993, the Louisiana Supreme Court suspended enforcement of Rule 3.8(f) as the Rule is applicable to federal prosecutors from December 16, 1993 through June 30, 1994.*]

(f) Not, except in habitual offender proceedings for the purpose of identification only, or in a post conviction proceeding on the issue of competency of counsel raised by his/her former client, subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless:

(1) the prosecutor reasonably believes:

(i) the information sought is not protected from disclosure by any applicable privilege;

(ii) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution;

(iii) the purpose of the subpoena is not to harass the attorney or his or her client; and

(2) the prosecutor obtains prior judicial approval after an opportunity for an adversarial proceeding.

Amended effective April 4, 1991; enforcement of Rule 3.8(f) suspended as the Rule is applicable to federal prosecutors from Dec. 16, 1993 through June 30, 1994.

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RULE 3.9 APPEARANCE IN NONADJUDICATIVE PROCEEDINGS

A lawyer appearing before a legislative or administrative tribunal in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provision of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. A lawyer shall not effect the prohibited communication through a third person, including the lawyer's client.

RULE 4.3 DEALING WITH UNREPRESENTED PERSON

A lawyer shall assume that an unrepresented person does not understand the lawyer's role in a matter and the lawyer shall carefully explain to the unrepresented person the lawyer's role in the matter.

During the course of a lawyer's representation of a client, the lawyer should not give advice to a nonrepresented person other than the advice to obtain counsel.

RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures

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giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing practice of law.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the exercise of the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

A lawyer shall not:

(a) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) A partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

PUBLIC SERVICE

RULE 6.1 PRO BONO PUBLICO SERVICE

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

RULE 6.2 ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) Representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) Representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) The client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer

relationship or the lawyer's ability to represent the client.

RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) If participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) Where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

(a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the services of the lawyer's firm. For example, a communication violates this rule if it:

(i) Contains a material misrepresentation of fact or law or omits a fact necessary to make the communication, considered as a whole, not misleading; or

(ii) Contains a statement or implication that the outcome of any particular legal matter was not or will not be related to its facts or merits; or

(iii) Contains a statement or implication that the lawyer can influence unlawfully any court, tribunal or other public body or official; or

(iv) In the case of a bankruptcy matter, fails to state clearly that the matter will involve a bankruptcy proceeding; or

(v) Compares the lawyer's or the law firm's services with any other lawyer's services, unless the comparison can be factually substantiated; or

(vi) Contains an endorsement by a celebrity or public figure without disclosing that (A) the endorser is not a client of the lawyer or the firm, if such is the case, and (B) the endorser is being paid or otherwise compensated for his or her endorsement, if such is the case; or

(vii) Contains a visual portrayal of a client by a nonclient or a lawyer by a nonlawyer without disclosure that the depiction is a dramatization; or

(viii) Contains misleading fee information. Every communication that contains information about the lawyer's fee shall be subject to the following requirements:

(A) Communications that state or indicate that no fee will be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.

(B) A lawyer who advertises a specific fee, hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days from the date it was last advertised; provided that for advertisements in print media published annually, the advertised fee shall be honored for a period not less than one year following initial publication.

(b) In determining whether a communication violates this rule, the communication shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

(c) A lawyer shall not accept a referral from any person, firm or entity whom the lawyer knows has engaged in any communication or solicitation relating to the referred matter that would violate these rules if the communication or solicitation were made by the lawyer.

Amended Oct. 1, 1993, effective Jan. 1, 1994.

RULE 7.2 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not initiate targeted solicitation, in the form of a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular

matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these rules:

(i) A copy or recording of each such communication and a record of when and where it was used shall be kept by the lawyer using such communication for three (3) years after its last dissemination.

(ii) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.

(iii) In the case of a written communication:

(A) such communication shall not resemble a legal pleading, notice, contract or other legal document and shall not be delivered via registered mail, certified mail or other restricted form of delivery; and

(B) the top of each page of such communication and the lower left corner of the face of the envelope in which the communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication, provided that if the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet.

(iv) In the case of a recorded communication, such communication shall be identified specifically as an advertisement at the beginning of the recording, at the end of the recording and on any envelope in which it is transmitted in accordance with the requirements of subparagraph (iii)(B) above.

(v) If the communication is prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of the intended recipient, such communication shall disclose how the lawyer obtained the information prompting the communication.

(c) Notwithstanding anything herein to the contrary, a lawyer shall not solicit professional employment from a prospective client through any means, even when not otherwise prohibited by these rules, if:

(i) the prospective client has made known to the lawyer a desire not to be solicited; or

(ii) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence.

(d) A lawyer shall not give anything of value to a person for recommending the lawyer's services; provided, however, that a lawyer may pay the reasonable and customary costs of an advertisement or communication not in violation of these rules.

Former Rule 7.3 renumbered as Rule 7.2 and amended Oct. 1, 1993, effective Jan. 1, 1994.

RULE 7.3 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, logo, letterhead, professional designation, trade name or trademark that violates the provisions of these rules. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association. A lawyer shall not use a trade or fictitious name unless the name is the law firm name that also appears on the lawyer's letterhead, business cards, office signs and fee contracts and appears with the lawyer's signature on pleadings and other legal documents.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but the identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

(c) The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communication on its behalf during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession.

Former Rule 7.5 renumbered as Rule 7.3 and amended Oct. 1, 1993, effective Jan. 1, 1994.

RULE 7.4 COMMUNICATIONS OF FIELDS OF PRACTICE

A lawyer shall not state or imply that the lawyer is certified, or is a specialist or an expert, in a particular area of law, unless such certification, specialization or expertise has been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization.

Amended Jan. 12, 1988; Oct. 1, 1993, effective Jan. 1, 1994.

MAINTAINING INTEGRITY OF THE PROFESSION

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(c) Fail to cooperate with the Committee on Professional Responsibility in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer possessing unprivileged knowledge of a violation of this code shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6.

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or

(g) Except upon the expressed assertion of a constitutional privilege, to fail to cooperate with the Committee on Professional Responsibility in its investigation of alleged misconduct.

(h) Present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

RULE 8.5 JURISDICTION

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

ARTICLE XVII. AMENDMENTS

SECTION 1. AMENDMENTS

These Articles of Incorporation, except Articles XIV, XV, and XVI, may be amended by a majority vote, by a secret mail ballot, of the members of this Association who actually vote. Such Amendments may be proposed by a majority vote of the House of Delegates or by a majority vote of the members of the Association at the Annual Meeting or on a written petition signed by one hundred (100) members and filed with the Secretary-Treasurer. The details for the balloting, including the time for voting and the contents of the ballot, shall be provided by the Board of Governors.

Articles XIV, XV, and XVI can be amended only by a majority vote of the House of Delegates, approved by the Supreme Court of Louisiana.

Amended effective Jan. 26, 1977.

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ARTICLE XVIII. PERSONAL LIABILITY OF MEMBERS OF THE BOARD OF GOVERNORS OR OFFICERS

No member of the Board of Governors or officer of this Association shall be personally liable to the Association or its members for monetary damages for breach of fiduciary duty as a member of the Board of Governors or as an officer, except to the limited extent provided by Louisiana corporation statutes.

Nothing contained herein shall be deemed to abrogate or diminish any exemption from liability or limitation of liability of the members of the Board of Governors or officers of this Association which is provided by law.

Adopted effective Jan. 10, 1991.

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b. Such annual fee shall include annual dues as determined in accordance with Article V of the Articles of Incorporation of the Louisiana State Bar Association and the disciplinary assessment fee as determined in accordance with Supreme Court Rule XIX.

7. Affiliation with the Louisiana State Bar Association; Business Associations.

a. Subject to the limitations set forth in subsection 4, every person licensed to practice as a legal consultant shall be entitled and subject to:

(i) the rights and obligations set forth in the Rules of Professional Conduct or arising from the other conditions and requirements that apply to a regular member of the bar of this state under the Rules of the Supreme Court of Louisiana; and,

(ii) the rights and obligations of a regular member of the bar of this state with respect to:

(aa) affiliation in the same law firm with one or more members of the bar of this state, including by:

1. employing one or more members of the bar of this state;

2. being employed by one or more members of the bar of this state or by any partnership or professional law corporation which includes members of the bar of this state or which maintains an office in this state; and

3. being a partner in any partnership, shareholder in any professional law corporation, or member of a limited liability company which includes members of the bar of this state or which maintains an office in this state; and

(bb) attorney-client privilege, work-product privilege and similar professional privileges.

b. Notwithstanding paragraph a(i) of this subsection, a person licensed as a legal consultant is not required to comply with the minimum requirements of continuing legal education as mandated by Rule 1.1(b) of Article XVI of these Articles of Incorporation.

8. Revocation of License.

In the event the Supreme Court determines that a person licensed as a legal consultant no longer meets the requirements for licensure, it shall revoke the license granted to such person.

Adopted May 9, 1996, effective July 1, 1996.

Historical Notes

A prior § 11 of Article 14 of the Articles of Incorporation of the Louisiana State Bar Association was deleted.

Section 11 Appendix. Licensing of Legal Consultants in Foreign Law

An applicant who wishes to become licensed as a consultant in foreign law, and who wishes to remain so licensed, shall be required to submit proof of malpractice insurance with a minimum coverage of $500,000 per claim, or other guarantee of financial responsibility in like amount and in a form acceptable to the Clerk of this Court.

Adopted May 9, 1996, effective July 1, 1996.

ARTICLE XV. DISCIPLINE AND DISBARMENT OF MEMBERS [REPEALED]

§§ 1 to 16. Vacated and repealed effective April 1, 1990

Publisher's Note: See now Supreme Court Rule XIX.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through May 15, 2009

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably

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available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Reenacted Jan. 20, 2004, effective March 1, 2004.

CLIENT-LAWYER RELATIONSHIP

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer is required to comply with the minimum requirements of continuing legal education as prescribed by Louisiana Supreme Court rule.

(c) A lawyer is required to comply with all of the requirements of the Supreme Court's rules regarding annual registration, including payment of Bar dues, payment of the disciplinary assessment, timely notification of changes of address, and proper disclosure of trust account information or any changes therein.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended March 29, 2006, effective April 15, 2006.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, religious, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended Jan. 4, 2006, effective April 1, 2006.

Historical Notes

Part IV of the Supreme Court order of January 4, 2006, enacting par. (c) of this Rule, provides:

"PART IV. These rule changes shall become effective on April 1, 2006, and shall apply prospectively only."

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by Paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; the litigation and other expenses that are to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter.

(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular

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representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended Jan. 4, 2006, effective April 1, 2006.

Historical Notes

Part IV of the Supreme Court order of January 4, 2006, amending par. (c) of this Rule, provides:

"PART IV. These rule changes shall become effective on April 1, 2006, and shall apply prospectively only."

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Reenacted Jan. 20, 2004, effective March 1, 2004.

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Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift, is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, or grandparent.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.

(1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).

(2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.

With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.

With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

(4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.

(i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.

(ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.

(iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.

(iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.

(5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.

(i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.

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(ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to any federally insured bank, savings and loan association, savings bank, or credit union where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.

(iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.

(iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.

(v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.

(vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.

(vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent, or the compensation is provided by contract with a third person such as an insurance contract or a prepaid legal service plan;

(2) there is no interference with the lawyer's independence or professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client, or a court approves a settlement in a certified class action. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) [Reserved].

(k) A lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents. An attorney may obtain a client's authorization to endorse and negotiate an instrument

given in settlement of the client's claim, but only after the client has approved the settlement.

(*l*) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (k) that applies to any one of them shall apply to all of them.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended Jan. 4, 2006, effective April 1, 2006; amended and effective May 19, 2006.

Historical Notes

Part IV of the Supreme Court order of January 4, 2006, repealing and reenacting par. (e) of this Rule, provides:

"PART IV. These rule changes shall become effective on April 1, 2006, and shall apply prospectively only."

Rule 1.9. Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1. 6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or

tinue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.14. Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm.

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(g) A lawyer shall create and maintain an "IOLTA ccount," which is a pooled interest-bearing client ust account for funds of clients or third persons hich are nominal in amount or to be held for such a hort period of time that the funds would not be xpected to earn income for the client or third person ı excess of the costs incurred to secure such income.

(1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF-approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions.

IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A) No earnings from such an account shall be made available to a lawyer or law firm.

(B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.

(2) To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.

(3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:

(A) Establishing the IOLTA Account as:

(1) an interest-bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C) Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."

(4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A) To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

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(B) to transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and

(C) to transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5) "Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

IOLTA RULES

Amended Jan. 3, 2008, effective April 1, 2008

(1) The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2) The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a) No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b) Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non-IOLTA, interest-bearing client trust account and earnings may be made available to the client or third person, respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer-client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c) Funds of clients or third-persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d) In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1) The amount of the funds to be deposited;

(2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) The rates of interest or yield at financial institutions where the funds are to be deposited;

(4) The cost of establishing and administering non-IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;

(5) The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;

(6) Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person.

The determination of whether funds to be invested could be utilized to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

(e) Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with

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other public-spirited members of the profession. The placement of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.

(3) The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:

(a) to provide legal services to the indigent and to the mentally disabled;

(b) to provide law-related educational programs for the public;

(c) to study and support improvements to the administration of justice; and

(d) for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4) The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

Reenacted Jan. 20, 2004, effective March 1, 2004; amended Jan. 3, 2008, effective April 1, 2008.

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 1.17. [Reserved]

Rule 1.18. Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from

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representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

COUNSELOR

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 2.2. (DELETED)

Order of Jan. 20, 2004, effective March 1, 2004.

Historical Notes

Prior to deletion by Supreme Court Order of January 20, 2004, effective March 1, 2004, Rule 2.2 related to situations in which a lawyer could act as intermediary between clients.

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 2.4. Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

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(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client, and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.6. Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A

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statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) Not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended and effective April 12, 2006.

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Reenacted Jan. 20, 2004, effective March 1, 2004.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with:

(a) a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(b) a person the lawyer knows is presently a director, officer, employee, member, shareholder or other constituent of a represented organization and

(1) who supervises, directs or regularly consults with the organization's lawyer concerning the matter;

(2) who has the authority to obligate the organization with respect to the matter; or

(3) whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in a matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a writing that, on its face, appears to be subject to the attorney-client privilege or otherwise confidential, under circumstances where it is clear that the writing was not intended for the receiving lawyer, shall refrain from examining the writing, promptly notify the sending lawyer, and return the writing.

Reenacted Jan. 20, 2004, effective March 1, 2004.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 5.2. Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay

to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) [Reserved]

(5) a lawyer may share legal fees as otherwise provided in Rule 7.2(b).

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission and that are provided by an attorney who has received a limited license to practice law pursuant to La. S. Ct. Rule XVII, § 14; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e)(1) A lawyer shall not:

(i) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline; or

(ii) employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, or an attorney who has been transferred to disability inactive status, during the period of suspension or transfer, unless first preceded by the submission of a fully executed employment registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court.

(2) The registration form provided for in Section (e)(1) shall include:

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(i) the identity and bar roll number of the suspended or transferred attorney sought to be hired;

(ii) the identity and bar roll number of the attorney having direct supervisory responsibility over the suspended attorney, or the attorney transferred to disability inactive status, throughout the duration of employment or association;

(iii) a list of all duties and activities to be assigned to the suspended attorney, or the attorney transferred to disability inactive status, during the period of employment or association;

(iv) the terms of employment of the suspended attorney, or the attorney transferred to disability inactive status, including method of compensation;

(v) a statement by the employing attorney that includes a consent to random compliance audits, to be conducted by the Office of Disciplinary Counsel, at any time during the employment or association of the suspended attorney, or the attorney transferred to disability inactive status; and

(vi) a statement by the employing attorney certifying that the order giving rise to the suspension or transfer of the proposed employee has been provided for review and consideration in advance of employment by the suspended attorney, or the attorney transferred to disability inactive status.

(3) For purposes of this Rule, the practice of law shall include the following activities:

(i) holding oneself out as an attorney or lawyer authorized to practice law;

(ii) rendering legal consultation or advice to a client;

(iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;

(iv) appearing as a representative of the client at a deposition or other discovery matter;

(v) negotiating or transacting any matter for or on behalf of a client with third parties;

(vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

(4) In addition, a suspended lawyer, or a lawyer transferred to disability inactive status, shall not receive, disburse or otherwise handle client funds.

(5) Upon termination of the suspended attorney, or the attorney transferred to disability inactive status, the employing attorney having direct supervisory authority shall promptly serve upon the Office of Disciplinary Counsel written notice of the termination.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended and effective March 24, 2004; amended March 8, 2005, effective April 1, 2005; amended May 14, 2008, effective July 1, 2008.

Historical Notes

Part 2 of the Order of Supreme Court, dated March 24, 2004, amending Rule 5.5(c) [see Rule 5.5(e)(1)(i) in Order of March 8, 2005], provides:

"This rule change shall be applicable to any lawyer who is allowed to permanently resign from the practice of law in lieu of discipline through any order, judgment, or decree of the Court which becomes final after the effective date."

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Reenacted Jan. 20, 2004, effective March 1, 2004.

PUBLIC SERVICE

Rule 6.1. Voluntary Pro Bono Publico Service

Every lawyer should aspire to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this aspirational goal, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, legal system or the legal profession.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Reenacted Jan. 20, 2004, effective March 1, 2004.

INFORMATION ABOUT LEGAL SERVICES [EFF. UNTIL OCT. 1, 2009]

Repeal and Reenactment

Article XVI, Rule 7 Series of the Articles of Incorporation of the Louisiana State Bar Association, Information About Legal Services, Rules 7.1 through 7.5 is effective until October 1, 2009. For Article XVI, Rule 7 Series of the Articles of Incorporation of the Louisiana State Bar Association, Rules 7.1 through 7.10, repealed and reenacted effective October 1, 2009, see post.

Rule 7.1. Communications Concerning a Lawyer's Services

Text effective until October 1, 2009

(a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the services of the lawyer's firm. For example, a communication violates this rule if it:

(i) Contains a material misrepresentation of fact or omits a fact necessary to make the communication, considered as a whole, not misleading; or

(ii) Contains a statement or implication that the outcome of any particular legal matter was not or will not be related to its facts or merits; or

(iii) Contains a statement or implication that the lawyer can influence unlawfully any court, tribunal or other public body or official; or

(iv) In the case of a bankruptcy matter, fails to state clearly that the matter will involve a bankruptcy proceeding; or

(v) Compares the lawyer's or the law firm's services with any other lawyer's services, unless the comparison can be factually substantiated; or

(vi) Contains an endorsement by a celebrity or public figure without disclosing that (A) the endorser is not a client of the lawyer or the firm, if such is the case, and (B) the endorser is being paid or otherwise compensated for his or her endorsement, if such is the case; or

(vii) Contains a visual portrayal of a client by a nonclient or a lawyer by a nonlawyer without disclosure that the depiction is a dramatization; or

(viii) Contains misleading fee information. Every communication that contains information about the lawyer's fee shall be subject to the following requirements:

(A) Communications that state or indicate that no fee will be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.

(B) A lawyer who advertises a specific fee, hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days from the date it was last advertised; provided that for advertisements in print media published annually, the advertised fee shall be honored for a period not less than one year following initial publication.

(b) In determining whether a communication violates this rule, the communication shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

(c) A lawyer shall not accept a referral from any person, firm or entity whom the lawyer knows has engaged in any communication or solicitation relating to the referred matter that would violate these rules if the communication or solicitation were made by the lawyer.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 7.2. Advertising

Text effective until October 1, 2009

A lawyer shall not give anything of value to a person for recommending the lawyer's services; provided, however, that

(a) a lawyer may pay the reasonable and customary costs of an advertisement or communication not in violation of these rules, and

(b) a lawyer may pay usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

Reenacted Jan. 20, 2004, effective March 1, 2004.

See Rule 7.1 of the Rules of Professional Conduct for example of a misleading communication in a bankruptcy matter.

Rule 7.3. Direct Contact with Prospective Clients

Text effective until October 1, 2009

(a) A lawyer shall not solicit professional employment in person, by person to person verbal telephone contact or through others acting at his request or on his behalf from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) In instances where there is no family or prior professional relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these rules:

(i) A copy or recording of each such communication and a record of when and where it was used shall be kept by the lawyer using such communication for three (3) years after its last dissemination.

(ii) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.

(iii) In the case of a written communication:

(A) such communication shall not resemble a legal pleading, notice, contract or other legal document and shall not be delivered via registered mail, certified mail or other restricted form of delivery;

(B) the top of each page of such communication and the lower left corner of the face of the envelope in which the communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication, provided that if the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet; or in the case of an electronic mail communication, the subject line of the communication states that "This is an advertisement for legal services"; and

(C) if the communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, such communication shall not be initiated by the lawyer unless the accident or disaster occurred more than 30 days prior to the mailing of the communication.

(iv) In the case of a recorded communication, such communication shall be identified specifically as an advertisement at the beginning of the recording, at the end of the recording and on any envelope

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in which it is transmitted in accordance with the requirements of subparagraph (iii)(B) above.

(v) If the communication is prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of the intended recipient, such communication shall disclose how the lawyer obtained the information prompting the communication.

(c) Notwithstanding anything herein to the contrary, a lawyer shall not solicit professional employment from a prospective client through any means, even when not otherwise prohibited by these rules, if:

(i) the prospective client has made known to the lawyer a desire not to be solicited; or

(ii) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 7.4. Communication of Fields of Practice

Text effective until October 1, 2009

A lawyer shall not state or imply that the lawyer is certified, or is a specialist or an expert, in a particular area of law, unless such certification, specialization or expertise has been recognized or approved in accordance with the rules and procedures established by the Louisiana Board of Legal Specialization.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 7.5. Firm Names and Letterheads

Text effective until October 1, 2009

(a) A lawyer shall not use a firm name, logo, letterhead, professional designation, trade name or trademark that violates the provisions of these rules. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association. A lawyer shall not use a trade or fictitious name unless the name is the law firm name that also appears on the lawyer's letterhead, business cards, office signs and fee contracts and appears with the lawyer's signature on pleadings and other legal documents.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but the identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

(c) The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communication on its behalf during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession.

Reenacted Jan. 20, 2004, effective March 1, 2004.

INFORMATION ABOUT LEGAL SERVICES [EFF. OCTOBER 1, 2009]

Repeal and Reenactment

Article XVI, Rule 7 Series of the Articles of Incorporation of the Louisiana State Bar Association, Information About Legal Services, Rules 7.1 through 7.10 is repealed and reenacted effective October 1, 2009. For Article XVI, Rule 7 Series of the Articles of Incorporation of the Louisiana State Bar Association, Rules 7.1 through 7.5, effective until October 1, 2009, see ante.

Rule 7.1. General

Text effective October 1, 2009

(a) Permissible Forms of Advertising. Subject to all the requirements set forth in these Rules, including the filing requirements of Rule 7.7, a lawyer may advertise services through public media, including but not limited to: print media, such as a telephone directory, legal directory, newspaper or other periodical; outdoor advertising, such as billboards and other signs; radio, television, and computer-accessed communications; recorded messages the public may access by dialing a telephone number; and written communication in accordance with Rule 7.4.

(b) Advertisements Not Disseminated in Louisiana. These rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Louisiana.

(c) Communications for Non-Profit Organizations. Publications, educational materials, websites and other communications by lawyers on behalf of non-profit organizations that are not motivated by pecuniary gain are not advertisements or unsolicited written communications within the meaning of these Rules.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing

the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.2. Communications Concerning a Lawyer's Services

Text effective October 1, 2009

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Content of Advertisements and Unsolicited Written Communications.

(1) *Name of Lawyer.* All advertisements and unsolicited written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.

(2) *Location of Practice.* All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.

(b) Permissible Content of Advertisements and Unsolicited Written Communications. If the content of an advertisement in any public media or unsolicited written communication is limited to the following information, the advertisement or unsolicited written communication is exempt from the filing and review requirement and, if true, shall be presumed not to be misleading or deceptive.

(1) *Lawyers and Law Firms.* A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(A) subject to the requirements of this Rule and Rule 7.10, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney", "lawyer" or "law firm";

(B) date of admission to the Louisiana State Bar Association and any other bars, current membership or positions held in the Louisiana State Bar Association, its sections or committees, former membership or positions held in the Louisiana State Bar Association, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice;

(C) technical and professional licenses granted by the State or other recognized licensing authorities and educational degrees received, including dates and institutions;

(D) military service, including branch and dates of service;

(E) foreign language ability;

(F) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;

(G) prepaid or group legal service plans in which the lawyer participates;

(H) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule;

(I) common salutatory language such as "best wishes," "good luck," "happy holidays," or "pleased to announce";

(J) punctuation marks and common typographical marks; and

(K) a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background.

(2) *Public Service Announcements.* A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule.

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

(1) *Statements About Legal Services.* A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

(A) contains a material misrepresentation of fact or law

(B) is false, misleading or deceptive;

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(C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;

(D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer's services provided upon request;

(E) promises results;

(F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;

(I) includes a portrayal of a client by a non-client or the reenactment of any events or scenes or pictures that are not actual or authentic;

(J) includes the portrayal of a judge or a jury, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;

(K) resembles a legal pleading, notice, contract or other legal document;

(L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or

(M) fails to comply with Rule 1.8(e)(4)(iii).

(2) *Prohibited Visual and Verbal Portrayals and Illustrations.* A lawyer shall not include in any advertisement or unsolicited written communication any visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things, or events that are false, misleading or deceptive.

(3) *Advertising Areas of Practice.* A lawyer or law firm shall not state or imply in advertisements or unsolicited written communications that the lawyer or law firm currently practices in an area of practice when that is not the case.

(4) *Stating or Implying Louisiana State Bar Association Approval.* A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.

(5) *Communication of Fields of Practice.* A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is "certified," "board certified," an "expert" or a "specialist" except as follows:

(A) **Lawyers Certified by the Louisiana Board of Legal Specialization.** A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer's certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is "certified," "board certified," an "expert in (area of certification)" or a "specialist in (area of certification)."

(B) **Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar.** A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice by stating that the lawyer is "certified," "board certified," an "expert in (area of certification)" or a "specialist in (area of certification)" if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification.

A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

(C) **Certification by Other State Bars.** A lawyer certified by another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice and may state in communications to the public that the lawyer is "certified," "board certified," an "expert in (area of certification)" or a "specialist in (area of certification)" if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

(6) *Disclosure of Liability For Expenses Other Than Fees.* Every advertisement and unsolicited written communication that contains information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose whether the client will be liable for any costs and/or expenses in addition to the fee.

(7) *Period for Which Advertised Fee Must be Honored.* A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days from the date last advertised unless the advertisement specifies a shorter period; provided that,

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for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(8) *Firm Name.* A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10.

(9) *Language of Required Statements.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must appear in the same language in which the advertisement or unsolicited written communication appears. If more than one language is used in an advertisement or unsolicited written communication, any words or statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

(10) *Appearance of Required Statements.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud.

(11) *Payment by Non-Advertising Lawyer.* No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm.

(12) *Referrals to Another Lawyer.* If the case or matter will be, or is likely to be, referred to another lawyer or law firm, the communication shall include a statement so advising the prospective client.

(13) *Payment for Recommendations; Lawyer Referral Service Fees.* A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:

(A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.3. [Reserved]

Rule 7.4. Direct Contact with Prospective Clients

Text effective October 1, 2009

(a) **Solicitation.** Except as provided in subdivision (b) of this Rule, a lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior lawyer-client relationship, in person, by person to person verbal telephone contact, through others acting at the lawyer's request or on the lawyer's behalf or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. A lawyer shall not permit employees or agents of the lawyer to solicit on the lawyer's behalf. A lawyer shall not enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this Rule. The term "solicit" includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes (i) any written form of communication directed to a specific recipient and not meeting the requirements of subdivision (b) of this Rule, and (ii) any electronic mail communication directed to a specific recipient and not meeting the requirements of subdivision (c) of Rule 7.6. For the purposes of this Rule 7.4, the phrase "prior lawyer-client relationship" shall not include relationships in which the client was an unnamed member of a class action.

(b) **Written Communication Sent on an Unsolicited Basis.**

(1) A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than thirty days prior to the mailing of the communication;

(B) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(C) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

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(D) the communication contains a false, misleading or deceptive statement or claim or is improper under subdivision (c)(1) of Rule 7.2; or

(E) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(2) Unsolicited written communications to prospective clients for the purpose of obtaining professional employment are subject to the following requirements:

(A) Unsolicited written communications to a prospective client are subject to the requirements of Rule 7.2.

(B) In instances where there is no family or prior lawyer-client relationship, a lawyer shall not initiate any form of targeted solicitation, whether a written or recorded communication, of a person or persons known to need legal services of a particular kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment unless such communication complies with the requirements set forth below and is not otherwise in violation of these Rules:

(i) Such communication shall state clearly the name of at least one member in good standing of the Association responsible for its content.

(ii) The top of each page of such written communication and the lower left corner of the face of the envelope in which the written communication is enclosed shall be plainly marked "ADVERTISEMENT" in print size at least as large as the largest print used in the written communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the "ADVERTISEMENT" mark shall appear above the address panel of the brochure or pamphlet and on the inside of the brochure or pamphlet. Written communications solicited by clients or prospective clients need not contain the "ADVERTISEMENT" mark.

(C) Unsolicited written communications mailed to prospective clients shall not resemble a legal pleading, notice, contract or other legal document and shall not be sent by registered mail, certified mail or other forms of restricted delivery.

(D) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, any unsolicited written communication concerning a specific matter shall include a statement so advising the client.

(E) Any unsolicited written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member of that person shall disclose how the lawyer obtained the information prompting the communication.

(F) An unsolicited written communication seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.5. Advertisements in the Electronic Media other than Computer-Accessed Communications

Text effective October 1, 2009

(a) Generally. With the exception of computer-based advertisements (which are subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2.

(b) Appearance on Television or Radio. Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.

(1) *Prohibited Content.* Television and radio advertisements shall not contain:

(A) any feature, including, but not limited to, background sounds, that is false, misleading or deceptive;

(B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm; or

(C) any spokesperson's voice or image that is recognizable to the public in the community where the advertisement appears;

(2) *Permissible Content.* Television and radio advertisements may contain:

(A) images that otherwise conform to the requirements of these Rules;

(B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm; or

(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as the spokesperson is not recognizable to the public in the community where the advertisement appears and that spokesperson shall provide a spoken disclosure identifying the spokesperson as a

spokesperson and disclosing that the spokesperson is not a lawyer.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.6. Computer-Accessed Communications

Text effective October 1, 2009

(a) Definition. For purposes of these Rules, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on World Wide Web search engine screens and elsewhere.

(b) Internet Presence. All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services:

(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;

(2) shall disclose one or more bona fide office location(s) of the lawyer or law firm or, in the absence of a bona fide office, the city or town of the lawyer's primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(C), (b)(2)(D), (b)(2)(E) and (b)(2)(F) of Rule 7.4 are met;

(2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised or, in the absence of a bona fide office, the city or town of the lawyer's primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) the subject line of the communication states "LEGAL ADVERTISEMENT."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.7. Evaluation of Advertisements

Text effective October 1, 2009

(a) Louisiana State Bar Association Rules of Professional Conduct Committee. With respect to said Committee, it shall be the task of the Committee, or any subcommittee designated by the Rules of Professional Conduct Committee (hereinafter collectively referred to as "the Committee"): 1) to evaluate all advertisements filed with the Committee for compliance with the Rules governing lawyer advertising and solicitation and to provide written advisory opinions concerning compliance with those Rules to the respective filing lawyers; 2) to develop a handbook on lawyer advertising for the guidance of and dissemination to the members of the Louisiana State Bar Association; and 3) to recommend, from time to time, such amendments to the Rules of Professional Conduct as the Committee may deem advisable.

(1) *Recusal of Members.* Members of the Committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or by other lawyers in their firms.

(2) *Meetings.* The Committee shall meet as often as is necessary to fulfill its duty to provide prompt opinions regarding submitted advertisements' compliance with the lawyer advertising and solicitation rules.

(3) *Procedural Rules.* The Committee may adopt such procedural rules for its activities as may be required to enable the Committee to fulfill its functions.

(4) *Reports to the Court.* Within six months following the conclusion of the first year of the Committee's evaluation of advertisements in accordance with these Rules, and annually thereafter, the Committee shall submit to the Supreme Court of Louisiana a report detailing the year's activities of the Committee. The report shall include such information as the Court may require.

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(b) Advance Written Advisory Opinion. Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer's voluntary submission in compliance with this subdivision shall be deemed to satisfy the regular filing requirement set forth below in subdivision (c) of this Rule.

(c) **Regular Filing.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.

(d) **Contents of Filing.** A filing with the Committee as permitted by subdivision (b) or as required by subdivision (c) shall consist of:

(1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.);

(2) a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;

(3) a printed copy of all text used in the advertisement;

(4) an accurate English translation, if the advertisement appears or is audible in a language other than English;

(5) a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(6) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used; and

(7) fees paid to the Louisiana State Bar Association, in an amount set by the Supreme Court of Louisiana: (A) for submissions filed prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication, as provided in subdivisions (b) and (c); or (B) for submissions not filed until after the lawyer's first dissemination of the advertisement or unsolicited written communication.

(e) **Evaluation of Advertisements.** The Committee shall evaluate all advertisements and unsolicited written communications filed with it pursuant to this Rule for compliance with the applicable rules on lawyer advertising and solicitation. The Committee shall complete its evaluation within thirty days following receipt of a filing unless the Committee determines that there is reasonable doubt that the advertisement or unsolicited written communication is in compliance with the Rules and that further examination is warranted but cannot be completed within the thirty-day period, and so advises the filing lawyer in writing within the thirty-day period. In the latter event, the Committee shall complete its review as promptly as the circumstances reasonably allow. If the Committee does not send any communication in writing to the filing lawyer within thirty days following receipt of the filing, the advertisement or unsolicited written communication will be deemed approved.

(f) **Additional Information.** If the Committee requests additional information, the filing lawyer shall comply promptly with the request. Failure to comply with such requests may result in a finding of noncompliance for insufficient information.

(g) **Notice of Noncompliance; Effect of Continued Use of Advertisement.** When the Committee determines that an advertisement or unsolicited written communication is not in compliance with the applicable Rules, the Committee shall advise the lawyer in writing that dissemination or continued dissemination of the advertisement or unsolicited written communication may result in professional discipline. The Committee shall report to the Office of Disciplinary Counsel a finding under subsections (c) or (f) of this Rule that the advertisement or unsolicited written communication is not in compliance, unless, within ten days of notice from the Committee, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.

(h) **Committee Determination Not Binding; Evi**dence. A finding by the Committee of either compli-

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(b) **Advance Written Advisory Opinion.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer's voluntary submission in compliance with this subdivision shall be deemed to satisfy the regular filing requirement set forth below in subdivision (c) of this Rule.

(c) **Regular Filing.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such advertisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.

(d) **Contents of Filing.** A filing with the Committee as permitted by subdivision (b) or as required by subdivision (c) shall consist of:

(1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.);

(2) a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;

(3) a printed copy of all text used in the advertisement;

(4) an accurate English translation, if the advertisement appears or is audible in a language other than English;

(5) a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(6) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used; and

(7) fees paid to the Louisiana State Bar Association, in an amount set by the Supreme Court of Louisiana: (A) for submissions filed prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication, as provided in subdivisions (b) and (c); or (B) for submissions not filed until after the lawyer's first dissemination of the advertisement or unsolicited written communication.

(e) **Evaluation of Advertisements.** The Committee shall evaluate all advertisements and unsolicited written communications filed with it pursuant to this Rule for compliance with the applicable rules on lawyer advertising and solicitation. The Committee shall complete its evaluation within thirty days following receipt of a filing unless the Committee determines that there is reasonable doubt that the advertisement or unsolicited written communication is in compliance with the Rules and that further examination is warranted but cannot be completed within the thirty-day period, and so advises the filing lawyer in writing within the thirty-day period. In the latter event, the Committee shall complete its review as promptly as the circumstances reasonably allow. If the Committee does not send any communication in writing to the filing lawyer within thirty days following receipt of the filing, the advertisement or unsolicited written communication will be deemed approved.

(f) **Additional Information.** If the Committee requests additional information, the filing lawyer shall comply promptly with the request. Failure to comply with such requests may result in a finding of noncompliance for insufficient information.

(g) **Notice of Noncompliance; Effect of Continued Use of Advertisement.** When the Committee determines that an advertisement or unsolicited written communication is not in compliance with the applicable Rules, the Committee shall advise the lawyer in writing that dissemination or continued dissemination of the advertisement or unsolicited written communication may result in professional discipline. The Committee shall report to the Office of Disciplinary Counsel a finding under subsections (c) or (f) of this Rule that the advertisement or unsolicited written communication is not in compliance, unless, within ten days of notice from the Committee, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.

(h) **Committee Determination Not Binding; Evidence.** A finding by the Committee of either compli-

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ance or noncompliance shall not be binding in a disciplinary proceeding, but may be offered as evidence.

(i) Change of Circumstances; Re-filing Requirement. If a change of circumstances occurring subsequent to the Committee's evaluation of an advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or a modified advertisement with the Committee along with an explanation of the change in circumstances and an additional fee as set by the Court.

(j) Maintaining Copies of Advertisements. A copy or recording of an advertisement or written or recorded communication shall be submitted to the Committee in accordance with the requirements of Rule 7.7, and the lawyer shall retain a copy or recording for five years after its last dissemination along with a record of when and where it was used. If identical unsolicited written communications are sent to two or more prospective clients, the lawyer may comply with this requirement by filing a copy of one of the identical unsolicited written communications and retaining for five years a single copy together with a list of the names and addresses of all persons to whom the unsolicited written communication was sent.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.8. Exemptions from the Filing and Review Requirement

Text effective October 1, 2009

The following are exempt from the filing and review requirements of Rule 7.7:

(a) any advertisement or unsolicited written communication that contains only content that is permissible under Rule 7.2(b).

(b) a brief announcement in any public media that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than permissible content of advertisements listed in Rule 7.2(b) and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement for purposes of this Rule and the Rule setting forth permissible content of advertisements, the following are criteria that may be considered:

(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;

(2) whether the announcement contains information concerning the lawyer's or law firm's area(s) of practice, legal background, or experience;

(3) whether the announcement contains the address or telephone number of the lawyer or law firm;

(4) whether the announcement concerns a legal subject;

(5) whether the announcement contains legal advice; and

(6) whether the lawyer or law firm paid to have the announcement published.

(c) A listing or entry in a law list or bar publication.

(d) A communication mailed only to existing clients, former clients, or other lawyers.

(e) Any written communications requested by a prospective client.

(f) Professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients.

(g) Computer-accessed communications as described in subdivision (b) of Rule 7.6.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.9. Information about a Lawyer's Services Provided upon Request

Text effective October 1, 2009

(a) Generally. Information provided about a lawyer's or law firm's services upon request shall comply with the requirements of Rule 7.2 unless otherwise provided in this Rule 7.9.

(b) Request for Information by Potential Client. Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) The lawyer or law firm may furnish such factual information regarding the lawyer or law firm deemed valuable to assist the client.

(2) The lawyer or law firm may furnish an engagement letter to the potential client; however, if the information furnished to the potential client

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includes a contingency fee contract, the top of each page of the contract shall be marked "SAMPLE" in print size at least as large as the largest print used in the contract and the words "DO NOT SIGN" shall appear on the client signature line.

(3) Notwithstanding the provisions of subdivision (c)(1)(D) of Rule 7.2, information provided to a potential client in response to a potential client's request may contain factually verifiable statements concerning past results obtained by the lawyer or law firm, if, either alone or in the context in which they appear, such statements are not otherwise false, misleading or deceptive.

(c) Disclosure of Intent to Refer Matter to Another Lawyer or Law Firm. A statement and any information furnished to a prospective client, as authorized by subdivision (b) of this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally-retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.10. Firm Names and Letterhead

Text effective October 1, 2009

(a) False, Misleading, or Deceptive. A lawyer or law firm shall not use a firm name, logo, letterhead, professional designation, trade name or service mark that violates the provisions of these Rules.

(b) Trade Names. A lawyer or law firm shall not practice under a trade name that implies a connection with a government agency, public or charitable services organization or other professional association, that implies that the firm is something other than a private law firm, or that is otherwise in violation of subdivision (c)(1) of Rule 7.2.

(c) Advertising Under Trade Name. A lawyer shall not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name shall be in violation of this Rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in More Than One Jurisdiction. A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in any jurisdiction where an office is located.

(e) Name of Public Officer or Former Member in Firm Name. The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Organizational Business Entities. Lawyers may state or imply that they practice in a partnership or other organizational business entity only when that is the fact.

(g) Deceased or Retired Members of Law Firm. If otherwise lawful and permitted under these Rules, a law firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the law firm, or of a predecessor firm in a continuing line of succession.

Reenacted June 26, 2008, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

MAINTAINING INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact;

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or

(c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.

Reenacted Jan. 20, 2004, effective March 1, 2004.

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Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Disciplinary Counsel.

(b) A lawyer who knows that a judge has committed a violation of the applicable rules of judicial conduct that raises a question as to the judge's honesty, trustworthiness or fitness for office shall inform the Judiciary Commission. Complaints concerning the conduct of federal judges shall be filed with the appropriate federal authorities in accordance with federal laws and rules governing federal judicial conduct and disability.

(c) This rule does not require the disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program or while serving as a member of the Ethics Advisory Service Committee.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended May 12, 2004, effective May 29, 2004.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or

(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

Reenacted Jan. 20, 2004, effective March 1, 2004.

Rule 8.5. Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Reenacted Jan. 20, 2004, effective March 1, 2004. Amended March 8, 2005, effective April 1, 2005.

ARTICLE XVII. AMENDMENTS

Section 1. Amendments

These Articles of Incorporation, except Articles XIV, XV, and XVI, may be amended by a majority vote, by a secret mail ballot, of the members of this Association who actually vote. Such Amendments may be proposed by a majority vote of the House of Delegates or by a majority vote of the members of the Association at the Annual Meeting or on a written petition signed by one hundred (100) members and filed with the Secretary-Treasurer. The details for the balloting, including the time for voting and the contents of the ballot, shall be provided by the Board of Governors.

Articles XIV, XV, and XVI can be amended only by a majority vote of the House of Delegates, approved by the Supreme Court of Louisiana.

Amended Jan. 11, 1977, effective Jan. 26, 1977.

ARTICLE XVIII. PERSONAL LIABILITY OF MEMBERS OF THE BOARD OF GOVERNORS OR OFFICERS

No member of the Board of Governors or officer of this Association shall be personally liable to the Association or its members for monetary damages for

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breach of fiduciary duty as a member of the Board of Governors or as an officer, except to the limited extent provided by Louisiana corporation statutes.

Nothing contained herein shall be deemed to abrogate or diminish any exemption from liability or limitation of liability of the members of the Board of Governors or officers of this Association which is provided by law.

Added Jan. 10, 1991.

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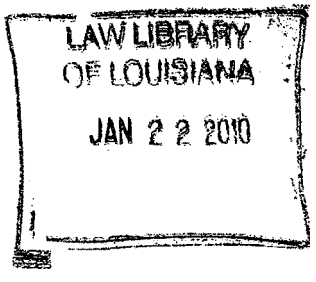
SUPPLEMENT TO
LOUISIANA
RULES OF COURT
STATE

JANUARY 2010

NOTICE

This Supplement should be affixed with the peel-off adhesive to the inside back cover of your Louisiana Rules of Court, State, 2009 pamphlet. See Preface for currency information.



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ARTICLES OF INCORPORATION OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

INFORMATION ABOUT LEGAL SERVICES

Rule
7.2. Communications Concerning a Lawyer's Services.
7.5. Advertisements in the Electronic Media other than Computer-Accessed Communications.
7.6. Computer-Accessed Communications.
7.7. Evaluation of Advertisements.

ARTICLE XVI. RULES OF PROFESSIONAL CONDUCT

Reenacted January 20, 2004, effective March 1, 2004

Including Amendments Received Through January 1, 2010

INFORMATION ABOUT LEGAL SERVICES

Repeal and Reenactment

Article XVI, Rule 7 Series of the Articles of Incorporation of the Louisiana State Bar Association, Information About Legal Services, Rules 7.1 through 7.10, was repealed and reenacted effective October 1, 2009.

Rule 7.2. Communications Concerning a Lawyer's Services

The following shall apply to any communication conveying information about a lawyer, a lawyer's services or a law firm's services:

(a) Required Content of Advertisements and Unsolicited Written Communications.

(1) *Name of Lawyer.* All advertisements and unsolicited written communications pursuant to these Rules shall include the name of at least one lawyer responsible for their content.

(2) *Location of Practice.* All advertisements and unsolicited written communications provided for under these Rules shall disclose, by city or town, one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised. If the office location is outside a city or town, the parish where the office is located must be disclosed. For the purposes of this Rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis, and which physical location shall have at least one lawyer who is regularly and routinely present in that physical location. In the absence of a bona fide office, the lawyer shall disclose the city or town of the primary registration statement address as it appears on the lawyer's annual registration statement. If an advertisement or unsolicited written communication lists a telephone number in connection with a specified geographic area other than an area containing a bona fide office or the lawyer's primary registration statement address, appropriate qualifying language must appear in the advertisement.

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(b) Permissible Content of Advertisements and Unsolicited Written Communications. If the content of an advertisement in any public media or unsolicited written communication is limited to the following information, the advertisement or unsolicited written communication is exempt from the filing and review requirement and, if true, shall be presumed not to be misleading or deceptive.

(1) *Lawyers and Law Firms.* A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(A) subject to the requirements of this Rule and Rule 7.10, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, Web site addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney", "lawyer" or "law firm";

(B) date of admission to the Louisiana State Bar Association and any other bars, current membership or positions held in the Louisiana State Bar Association, its sections or committees, former membership or positions held in the Louisiana State Bar Association, its sections or committees, together with dates of membership, former positions of employment held in the legal profession, together with dates the positions were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Louisiana where the lawyer is licensed to practice;

(C) technical and professional licenses granted by the State or other recognized licensing authorities and educational degrees received, including dates and institutions;

(D) military service, including branch and dates of service;

(E) foreign language ability;

(F) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (c)(5) of this Rule;

(G) prepaid or group legal service plans in which the lawyer participates;

(H) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (c)(6) and (c)(7) of this Rule;

(I) common salutatory language such as "best wishes," "good luck," "happy holidays," or "pleased to announce";

(J) punctuation marks and common typographical marks; and

(K) a photograph or image of the lawyer or lawyers who are members of or employed by the firm against a plain background.

(2) *Public Service Announcements.* A lawyer or law firm may be listed as a sponsor of a public service announcement or charitable, civic, or community program or event as long as the information about the lawyer or law firm is limited to the permissible content set forth in subdivision (b)(1) of this Rule.

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

(1) *Statements About Legal Services.* A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services or the law firm's services. A communication violates this Rule if it:

(A) contains a material misrepresentation of fact or law

(B) is false, misleading or deceptive;

(C) fails to disclose material information necessary to prevent the information supplied from being false, misleading or deceptive;

(D) contains a reference or testimonial to past successes or results obtained, except as allowed in the Rule regulating information about a lawyer's services provided upon request;

(E) promises results;

(F) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(G) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(H) contains a paid testimonial or endorsement, unless the fact of payment is disclosed;

(I) includes a portrayal of a client by a non-client without disclaimer of such, as required by Rule 7.2(c)(10), or the depiction of any events or scenes or

pictures that are not actual or authentic without disclaimer of such, as required by Rule 7.2(c)(10);

(J) includes the portrayal of a judge or a jury, the portrayal of a lawyer by a non-lawyer, the portrayal of a law firm as a fictionalized entity, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise implies that lawyers are associated in a law firm if that is not the case;

(K) resembles a legal pleading, notice, contract or other legal document;

(L) utilizes a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; or

(M) fails to comply with Rule 1.8(e)(4)(iii).

(2) *Prohibited Visual and Verbal Portrayals and Illustrations.* A lawyer shall not include in any advertisement or unsolicited written communication any visual or verbal descriptions, depictions, illustrations (including photographs) or portrayals of persons, things, or events that are false, misleading or deceptive.

(3) *Advertising Areas of Practice.* A lawyer or law firm shall not state or imply in advertisements or unsolicited written communications that the lawyer or law firm currently practices in an area of practice when that is not the case.

(4) *Stating or Implying Louisiana State Bar Association Approval.* A lawyer or law firm shall not make any statement that directly or impliedly indicates that the communication has received any kind of approval from The Louisiana State Bar Association.

(5) *Communication of Fields of Practice.* A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is "certified," "board certified," an "expert" or a "specialist" except as follows:

(A) **Lawyers Certified by the Louisiana Board of Legal Specialization.** A lawyer who complies with the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization, may inform the public and other lawyers of the lawyer's certified area(s) of legal practice. Such communications should identify the Louisiana Board of Legal Specialization as the certifying organization and may state that the lawyer is "certified," "board certified," an "expert in (area of certification)" or a "specialist in (area of certification)."

(B) **Lawyers Certified by Organizations Other Than the Louisiana Board of Legal Specialization or Another State Bar.** A lawyer certified by an organization other than the Louisiana Board of Legal Specialization or another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice by stating that the lawyer is "certified," "board certified," an "expert in (area of certification)" or a "specialist in (area of certification)" if:

(i) the lawyer complies with Section 6.2 of the Plan of Legal Specialization for the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the full name of the organization in all communications pertaining to such certification.

A lawyer who has been certified by an organization that is accredited by the American Bar Association is not subject to Section 6.2 of the Plan of Legal Specialization.

(C) **Certification by Other State Bars.** A lawyer certified by another state bar may inform the public and other lawyers of the lawyer's certified area(s) of legal practice and may state in communications to the public that the lawyer is "certified," "board certified," an "expert in (area of certification)" or a "specialist in (area of certification)" if:

(i) the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Plan of Legal Specialization, as determined by the Louisiana Board of Legal Specialization; and,

(ii) the lawyer includes the name of the state bar in all communications pertaining to such certification.

(6) *Disclosure of Liability For Expenses Other Than Fees.* Every advertisement and unsolicited written communication that contains information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, shall disclose wheth-

er the client will be liable for any costs and/or expenses in addition to the fee.

(7) *Period for Which Advertised Fee Must be Honored.* A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least ninety days from the date last advertised unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(8) *Firm Name.* A lawyer shall not advertise services under a name that violates the provisions of Rule 7.10.

(9) *Language of Required Statements.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must appear in the same language in which the advertisement or unsolicited written communication appears. If more than one language is used in an advertisement or unsolicited written communication, any words or statements required by these Rules must appear in each language used in the advertisement or unsolicited written communication.

(10) *Appearance of Required Statements, Disclosures and Disclaimers.* Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud.

All disclosures and disclaimers required by these Rules shall be clear and conspicuous. Written disclosures and disclaimers shall use a print size at least as large as the largest print size used in the advertisement or unsolicited written communication, and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer. Spoken disclosures and disclaimers shall be plainly audible and spoken at the same or slower rate of speed as the other spoken content of the advertisement. All disclosures and disclaimers used in advertisements that are televised or displayed electronically shall be both spoken aloud and written legibly.

(11) *Payment by Non-Advertising Lawyer.* No lawyer shall, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm.

(12) *Referrals to Another Lawyer.* If the case or matter will be, or is likely to be, referred to another lawyer or law firm, the communication shall include a statement so advising the prospective client.

(13) *Payment for Recommendations; Lawyer Referral Service Fees.* A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:

(A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

Reenacted June 26, 2008, effective October 1, 2009. Amended June 4, 2009, effective October 1, 2009; June 30, 2009, effective October 1, 2009.

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, and by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009.

Rule 7.5. Advertisements in the Electronic Media other than Computer-Accessed Communications

Enforcement of Rule 7.5(b)(2)(C) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.

(a) Generally. With the exception of computer-based advertisements (which are

subject to the special requirements set forth in Rule 7.6), all advertisements in the electronic media, including but not limited to television and radio, are subject to the requirements of Rule 7.2.

(b) Appearance on Television or Radio. Advertisements on the electronic media such as television and radio shall conform to the requirements of this Rule.

(1) *Prohibited Content.* Television and radio advertisements shall not contain:

(A) any feature, including, but not limited to, background sounds, that is false, misleading or deceptive; or

(B) lawyers who are not members of the advertising law firm speaking on behalf of the advertising lawyer or law firm.

(2) *Permissible Content.* Television and radio advertisements may contain:

(A) images that otherwise conform to the requirements of these Rules;

(B) a lawyer who is a member of the advertising firm personally appearing to speak regarding the legal services the lawyer or law firm is available to perform, the fees to be charged for such services, and the background and experience of the lawyer or law firm; or

(C) a non-lawyer spokesperson speaking on behalf of the lawyer or law firm, as long as that spokesperson shall provide a spoken and written disclosure, as required by Rule 7.2(c)(10), identifying the spokesperson as a spokesperson, disclosing that the spokesperson is not a lawyer and disclosing that the spokesperson is being paid to be a spokesperson, if paid.

Reenacted June 26, 2008, effective October 1, 2009. Amended June 4, 2009, effective October 1, 2009.

Validity

Rule 7.5 (b)(2)(C) has been held unconstitutional in the case of Public Citizen, Inc. v. Louisiana Attorney Disciplinary Bd., 642 F.Supp.2d 539 (E.D. La., Aug. 3, 2009).

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009, and by Supreme Court order dated September 22, 2009, suspending the enforcement of Rule 7.5(b)(2)(C) until further notice.

Rule 7.6. Computer-Accessed Communications

Enforcement of Rule 7.6(d) is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.

(a) Definition. For purposes of these Rules, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on World Wide Web search engine screens and elsewhere.

(b) Internet Presence. All World Wide Web sites and home pages accessed via the Internet that are controlled, sponsored, or authorized by a lawyer or law firm and that contain information concerning the lawyer's or law firm's services:

(1) shall disclose all jurisdictions in which the lawyer or members of the law firm are licensed to practice law;

(2) shall disclose one or more bona fide office location(s) of the lawyer or law firm or, in the absence of a bona fide office, the city or town of the lawyer's primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) are considered to be information provided upon request and, therefore, are otherwise governed by the requirements of Rule 7.9.

(c) Electronic Mail Communications. A lawyer shall not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, an unsolicited electronic mail communication directly or indirectly to a prospective client for the purpose of obtaining professional employment unless:

(1) the requirements of subdivisions (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(C), (b)(2)(D), (b)(2)(E) and (b)(2)(F) of Rule 7.4 are met;

(2) the communication discloses one or more bona fide office location(s) of the lawyer or lawyers who will actually perform the services advertised or, in the absence of a bona fide office, the city or town of the lawyer's primary registration statement address, in accordance with subdivision (a)(2) of Rule 7.2; and

(3) the subject line of the communication states "LEGAL ADVERTISEMENT."

(d) Advertisements. All computer-accessed communications concerning a lawyer's or law firm's services, other than those subject to subdivisions (b) and (c) of this Rule, are subject to the requirements of Rule 7.2 when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

Reenacted June 26, 2008, effective October 1, 2009. Amended June 4, 2009, effective October 1, 2009.

Validity

Rule 7.6(d) has been held unconstitutional in the case of Public Citizen, Inc. v. Louisiana Attorney Disciplinary Bd., 642 F.Supp.2d 539 (E.D. La., Aug. 4, 2009).

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009, and by Supreme Court order dated September 22, 2009, suspending the enforcement of Rule 7.6(d) until further notice.

Rule 7.7. Evaluation of Advertisements

Enforcement of Rule 7.7 as it pertains to filing requirements for Internet advertising is suspended, until further notice, by order of the Supreme Court of Louisiana, dated September 22, 2009.

(a) Louisiana State Bar Association Rules of Professional Conduct Committee. With respect to said Committee, it shall be the task of the Committee, or any subcommittee designated by the Rules of Professional Conduct Committee (hereinafter collectively referred to as "the Committee"): 1) to evaluate all advertisements filed with the Committee for compliance with the Rules governing lawyer advertising and solicitation and to provide written advisory opinions concerning compliance with those Rules to the respective filing lawyers; 2) to develop a handbook on lawyer advertising for the guidance of and dissemination to the members of the Louisiana State Bar Association; and 3) to recommend, from time to time, such amendments to the Rules of Professional Conduct as the Committee may deem advisable.

(1) *Recusal of Members.* Members of the Committee shall recuse themselves from consideration of any advertisement proposed or used by themselves or by other lawyers in their firms.

(2) *Meetings.* The Committee shall meet as often as is necessary to fulfill its duty to provide prompt opinions regarding submitted advertisements' compliance with the lawyer advertising and solicitation rules.

(3) *Procedural Rules.* The Committee may adopt such procedural rules for its activities as may be required to enable the Committee to fulfill its functions.

(4) *Reports to the Court.* Within six months following the conclusion of the first year of the Committee's evaluation of advertisements in accordance with these Rules, and annually thereafter, the Committee shall submit to the Supreme Court of Louisiana a report detailing the year's activities of the Committee. The report shall include such information as the Court may require.

(b) Advance Written Advisory Opinion. Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) may obtain a written advisory opinion concerning the compliance of a contemplated advertisement or unsolicited written communication in advance of disseminating the advertisement or communication by submitting to the Committee the material and fee specified in subdivision (d) of this Rule at least thirty days prior to such dissemination. If the Committee finds that the advertisement or unsolicited written communication complies with these Rules, the lawyer's voluntary submission in compliance with this subdivision shall be deemed to satisfy the regular filing requirement set forth below in subdivision (c) of this Rule.

(c) **Regular Filing.** Subject to the exemptions stated in Rule 7.8, any lawyer who advertises services through any public media or through unsolicited written communications sent in compliance with Rule 7.4 or 7.6(c) shall file a copy of each such adver-

tisement or unsolicited written communication with the Committee for evaluation of compliance with these Rules. The copy shall be filed either prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication and shall be accompanied by the information and fee specified in subdivision (d) of this Rule. If the lawyer has opted to submit an advertisement or unsolicited written communication in advance of dissemination, in compliance with subdivision (b) of this Rule, and the advertisement or unsolicited written communication is then found to be in compliance with the Rules, that voluntary advance submission shall be deemed to satisfy the regular filing requirement set forth above.

(d) Contents of Filing. A filing with the Committee as permitted by subdivision (b) or as required by subdivision (c) shall consist of:

(1) a copy of the advertisement or communication in the form or forms in which it is to be disseminated and is readily-capable of duplication by the Committee (e.g., videotapes, audiotapes, print media, photographs of outdoor advertising, etc.);

(2) a typewritten transcript of the advertisement or communication, if any portion of the advertisement or communication is on videotape, audiotape, electronic/digital media or otherwise not embodied in written/printed form;

(3) a printed copy of all text used in the advertisement;

(4) an accurate English translation, if the advertisement appears or is audible in a language other than English;

(5) a sample envelope in which the written communication will be enclosed, if the communication is to be mailed;

(6) a statement listing all media in which the advertisement or communication will appear, the anticipated frequency of use of the advertisement or communication in each medium in which it will appear, and the anticipated time period during which the advertisement or communication will be used; and

(7) fees paid to the Louisiana State Bar Association, in an amount set by the Supreme Court of Louisiana: (A) for submissions filed prior to or concurrently with the lawyer's first dissemination of the advertisement or unsolicited written communication, as provided in subdivisions (b) and (c); or (B) for submissions not filed until after the lawyer's first dissemination of the advertisement or unsolicited written communication.

(e) Evaluation of Advertisements. The Committee shall evaluate all advertisements and unsolicited written communications filed with it pursuant to this Rule for compliance with the applicable rules on lawyer advertising and solicitation. The Committee shall complete its evaluation within thirty days following receipt of a filing unless the Committee determines that there is reasonable doubt that the advertisement or unsolicited written communication is in compliance with the Rules and that further examination is warranted but cannot be completed within the thirty-day period, and so advises the filing lawyer in writing within the tbirty-day period. In the latter event, the Committee shall complete its review as promptly as the circumstances reasonably allow. If the Committee does not send any communication in writing to the filing lawyer within thirty days following receipt of the filing, the advertisement or unsolicited written communication will be deemed approved.

(f) Additional Information. If the Committee requests additional information, the filing lawyer shall comply promptly with the request. Failure to comply with such requests may result in a finding of non-compliance for insufficient information.

(g) Notice of Noncompliance; Effect of Continued Use of Advertisement. When the Committee determines that an advertisement or unsolicited written communication is not in compliance with the applicable Rules, the Committee shall advise the lawyer in writing that dissemination or continued dissemination of the advertisement or unsolicited written communication may result in professional discipline. The Committee shall report to the Office of Disciplinary Counsel a finding under subsections (c) or (f) of this Rule that the advertisement or unsolicited written communication is not in compliance, unless, within ten days of notice from the Committee, the filing lawyer certifies in writing that the advertisement or unsolicited written communication has not and will not be disseminated.

(h) Committee Determination Not Binding; Evidence. A finding by the Committee of either compliance or noncom-

pliance shall not be binding in a disciplinary proceeding, but may be offered as evidence.

(i) Change of Circumstances; Re-filing Requirement. If a change of circumstances occurring subsequent to the Committee's evaluation of an advertisement or unsolicited written communication raises a substantial possibility that the advertisement or communication has become false, misleading or deceptive as a result of the change in circumstances, the lawyer shall promptly re-file the advertisement or a modified advertisement with the Committee along with an explanation of the change in circumstances and an additional fee as set by the Court.

(j) Maintaining Copies of Advertisements. A copy or recording of an advertisement or written or recorded communication shall be submitted to the Committee in accordance with the requirements of Rule 7.7, and the lawyer shall retain a copy or recording for five years after its last dissemination along with a record of when and where it was used. If identical unsolicited written communications are sent to two or more prospective clients, the lawyer may comply with this requirement by filing a copy of one of the identical unsolicited written communications and retaining for five years a single copy together with a list of the names and addresses of all persons to whom the unsolicited written communication was sent.

Reenacted June 26, 2008, effective October 1, 2009.

Validity

Rule 7.7 as it pertains to filing requirements for Internet advertising has been held unconstitutional in the case of Public Citizen, Inc. v. Louisiana Attorney Disciplinary Bd., 642 F.Supp.2d 539 (E.D. La., Aug. 3, 2009).

Historical Notes

Supreme Court order dated June 26, 2008, repealing and reenacting the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association effective December 1, 2008, was amended by Supreme Court order dated October 31, 2008, changing the effective date to April 1, 2009, by Supreme Court order dated February 18, 2009, changing the effective date to October 1, 2009, and by Supreme Court order dated September 22, 2009, suspending the enforcement of Rule 7.7 as it pertains to filing requirements for Internet advertisements until further notice.

WAIVER OF STATUTE OF LIMITATIONS

1. I, G. Thomas Porteous, Jr., have been advised by my attorney, Kyle Shonekas, that I am a target of a federal grand jury investigation with respect to a number of matters, including but not limited to possible violations of Title 18, United States Code, Sections 152 (bankruptcy fraud), 201 (bribery and gratuities), 208 (criminal conflict of interest), 401 (criminal contempt), 1001 (false statement), and 1341, 1343, and 1346 (honest services mail and wire fraud).

2. I have been advised by my attorney and understand that under federal law, as set forth in Title 18, United States Code, Section 3282, the statute of limitations for the offenses described above is five (5) years from the date on which the crimes were committed, unless there is an agreement by the person to be charged that charges may be brought after that date. I further understand that, absent such agreement on my part, I could not be prosecuted for any offenses after the five-year period expires.

3. On April 5, 2006, I agreed to a tolling of the applicable statute of limitations from April 5, 2006, to and including June 5, 2006, which on May 26, 2006, I agreed to extend to and including July 7, 2006. By this writing I agree to an additional extension of the tolling of the applicable statute of limitations from April 5, 2006, to and including September 8, 2006.

4. I understand that by agreeing to waive and not to assert the claim of the statute of limitations, I am giving up my right to be charged within five (5) years of the date of the alleged acts constituting the violations. By signing this document, I knowingly

DEF00835
PORT Exhibit 1003

Received: Apr 5 2006 03:30pm
FROM (WED) 4. 5'06 15:37/ST. 15:36/NO. 4861219652 P 4

5. I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

6. I have discussed this matter with my attorney, Kyle Shonekas, and he and I fully understand the consequences of this waiver. No promises, representations, or inducements of any kind other than those set forth herein have been made to me in connection with this waiver.

Signed this 5th day of April, 2006.

Peter Ainsworth
Deputy Chief
Daniel A. Petalas
Trial Attorney
Public Integrity Section
Criminal Division

G. Thomas Porteous, Jr.

Kyle Shonekas, attorney for
G. Thomas Porteous, Jr.

WAIVER OF STATUTE OF LIMITATIONS

1. I, G. Thomas Porteous, Jr., have been advised by my attorney, Kyle Shonekas, that I am a target of a federal grand jury investigation with respect to a number of matters, including but not limited to possible violations of Title 18, United States Code, Sections 152 (bankruptcy fraud) , 201 (bribery and gratuities), 206 (criminal conflict of interest) , 401 (criminal contempt), 1001 (false statement), and 1341, 1343, and 1346 (honest services main and wire fraud).

2. I have been advised by my attorney and understand that under federal law, as set forth in Title 18, United States Code, Section 3282, the statute of limitations for the offenses described above is five (5) years from the date on which the crimes were committed, unless there is an agreement by the person to be charged that charges may be brought after that date. I further understand that, absent such agreement on my part, I could not be prosecuted for any offenses after the five-year period expires.

3. I agree co a tolling of the applicable statute of limitations from April 5, 2006, to and including June 5, 2006.

4. I understand that by agreeing to waive and not Lo assert the claim of the statute of limitations, I am giving up my right. to be charged within five (5) years of the date of the alleged acts constituting the violations. By signing this document, I knowingly and voluntarily waive any rights I may have under the statute of limitations regarding charges which may result from the grand jury investigation described in this document, provided that Such charges are brought on or before June 5, 2006.

5. I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

6. I have discussed this matter with my attorney, Kyle Shonekas, and he and I fully understand the consequences of this waiver. No promises, representations, or inducements of any kind other than those set forth herein have been made to me in connection with this waiver.

Signed this 5th day of April, 2006.

Peter Ainsworth
Deputy Chief
Daniel A. Petalas
Trial Attorney
Public Integrity Section
Criminal Division

G. Thomas Porteous, Jr.

Kyle Shonekas, attorney for
G. Thomas Porteous, Jr.

Received: Apr 5 2006 03:30pm
FROM (WED) 4. 5'06 15:36/ST. 15:36/NO. 4861219652 P 3

WAIVER OF STATUTE OF LIMITATIONS

1. I, G. Thomas Porteous, Jr., have been advised by my attorney, Kyle Shonekas, that I am a target of a federal grand jury investigation with respect to a number of matters, including but not limited to possible violations of Title 18, United States Code, Sections 152 (bankruptcy fraud), 201 (bribery and gratuities), 208 (criminal conflict of interest), 401 (criminal contempt), 1001 (false statement), and 1341, 1343, and 1346 (honest services mail and wire fraud).

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3. I agree to a tolling of the applicable statute of limitations from April 5, 2006, to and including June 5, 2006.

4. I understand that by agreeing to waive and not to assert the claim of the statute of limitations, I am giving up my right to be charged within five (5) years of the date of the alleged acts constituting the violations. By signing this document, I knowingly and voluntarily waive any rights I may have under the statute of limitations regarding charges which may result from the grand jury investigation described in this document, provided that such charges are brought on or before June 5, 2006.

and voluntarily waive any rights I may have under the statute of limitations regarding charges which may result from the grand jury investigation described in this document, provided that such charges are brought on or before September 8, 2006.

5. I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

6. I have discussed this matter with my attorney, Kyle Shonekas, and he and I fully understand the consequences of this waiver. No promises, representations, or inducements of any kind other than those set forth herein have been made to me in connection with this waiver.

Signed this 22 day of June, 2006.

Peter Ainsworth
Deputy Chief
Daniel A. Petalas
Trial Attorney
Public Integrity Section
Criminal Division

G. Thomas Porteous, Jr.

Kyle Shonekas, attorney for
G. Thomas Porteous, Jr.

WAIVER OF STATUTE OF LIMITATIONS

1. I, G. Thomas Porteous, Jr., have been advised by my attorney, Kyle Shonekas, that I am a target of a federal grand jury investigation with respect to a number of matters, including but not limited to possible violations of Title 18, United States Code, Sections 152 (bankruptcy fraud), 201 (bribery and gratuities), 208 (criminal conflict of interest), 401 (criminal contempt), 1001 (false statement), and 1341, 1343, and 1346 (honest services mail and wire fraud).

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4. I understand that by agreeing to waive and not to assert the claim of the statute of limitations, I am giving up my right to be charged within five (5) years of the date of the alleged acts constituting the violations. By signing this document, I knowingly and voluntarily waive any rights I may have under the statute of limitations regarding charges which may result from the grand jury investigation described in this document, provided that such charges are brought on or before September 8, 2006.

5. I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

6. I have discussed this matter with my attorney, Kyle Shonekas, and he and I fully understand the consequences of this waiver. No promises, representations, or inducements of any kind other than those set forth herein have been made to me in connection with this waiver.

Signed this 2nd day of June, 2006.

Peter Ainsworth
Deputy Chief
Daniel A. Petalas
Trial Attorney
Public Integrity Section
Criminal Division

G. Thomas Porteous, Jr.

Kyle Shonekas, attorney for
G. Thomas Porteous, Jr.

WAIVER OF STATUTE OF LIMITATIONS

1. I, G. Thomas Porteous, Jr., have been advised by my attorney, Kyle Schonekas, that I am a target of a federal grand jury investigation with respect to a number of matters, including but not limited to possible violations of Title 18, United States Code, Sections 152 (bankruptcy fraud), 201 (bribery and gratuities), 208 (criminal conflict of interest), 401 (criminal contempt), 1001 (false statement), and 1341, 1343, and 1346 (honest services mail and wire fraud).

2. I have been advised by my attorney and understand that under federal law, as set forth in Title 18, United States Code, Section 3282, the statute of limitations for the offenses described above is five (5) years from the date on which the crimes were committed, unless there is an agreement by the person to be charged that charges may be brought after that date. I further understand that, absent such agreement on my part, I could not be prosecuted for any offenses after the five-year period expires.

3. I previously have agreed to a tolling of the applicable statute of limitations from April 5, 2006, to and including October 27, 2006. By this writing I agree to an additional extension of the tolling of the applicable statute of limitations from April 5, 2006, to and including December 1, 2006.

4. I understand that by agreeing to waive and not to assert the claim of the statute of limitations, I am giving up my right to be charged within five (5) years of the date of the alleged acts constituting the violations. By signing this document, I knowingly and voluntarily waive any rights I may have under the statute of

DEF00841
PORT Exhibit 1005

limitations regarding charges which may result from the grand jury investigation described in this document, provided that such charges are brought on or before December 1, 2006.

5. I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

6. I have discussed this matter with my attorney, Kyle Schonekas, and he and I fully understand the consequences of this waiver. No promises, representations, or inducements of any kind other than those set forth herein have been made to me in connection with this waiver.

Signed this 16th day of October, 2006.

Peter Ainsworth
Deputy Chief
Daniel A. Petalas
Trial Attorney
Public Integrity Section
Criminal Division

G. Thomas Porteous, Jr.

Kyle Schonekas, attorney for
G. Thomas Porteous, Jr.

WAIVER OF STATUTE OF LIMITATIONS

1. I, G. Thomas Porteous, Jr., have been advised by my attorney, Kyle Schonekas, that I am a target of a federal grand jury investigation with respect to a number of matters, including but not limited to possible violations of Title 18, United States Code, Sections 152 (bankruptcy fraud), 201 (bribery and gratuities), 208 (criminal conflict of interest), 401 (criminal contempt), 1001 (false statement), and 1341, 1343, and 1346 (honest services mail and wire fraud).

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4. I understand that by agreeing to waive and not to assert the claim of the statute of limitations, I am giving up my right to be charged within five (5) years of the date of the alleged acts constituting the violations. By signing this document, I knowingly and voluntarily waive any rights I may have under the statute of limitations regarding charges which may result from the grand jury investigation described in this document, provided that such charges are brought on or before December 1, 2006.

5. I understand that nothing herein has the effect of extending or reviving any such period of limitations that has already expired prior to April 5, 2006.

6. I have discussed this matter with my attorney, Kyle Schonekas, and he and I fully understand the consequences of this waiver. No promises, representations, or inducements of any kind other than those set forth herein have been made to me in connection with this waiver.

Signed this 16th day of October, 2006.

Peter Ainsworth
Deputy Chief
Daniel A. Petalas
Trial Attorney
Public Integrity Section
Criminal Division

G. Thomas Porteous, Jr.

Kyle Schonekas, attorney for
G. Thomas Porteous, Jr.

Twenty-Fourth Judicial District Court

Seniority List of Judges

8-Jan-09

Date of Office		Judge	Chief Judge	Division	Status
		Prentice Edrington, Sr.		A	1920-1924
?		John Fleury			
22-Dec-24		L. Robert Rivard		A	
1-Aug-44		Leo W. McCune		B	
16-Feb-51		L. Julian Samuel		A	Crt. of Appeals
31-Mar-55		John C. Boutall		C	Deceased
26-Sep-60	18-Dec-70	Edward J.Stoulig		A	Crt. of Appeals
* 14-Dec-60		Robert G. Hughes		D	
* 30-Dec-60		Frederick J. R. Heebe		B	U.S. District Crt.
1-Dec-64		Fred S. Bowes	1974 - 1978	E	Deceased
27-May-66		Frank V. Zaccaria	10/1976 - 10/1977	B	Deceased
12-Dec-66		Floyd W. Newlin	10/1977 - 10/1978	F	
12-Dec-66		H. Charles Gaudin		G	Crt. of Appeals
15-Sep-69		Gordon L. Bynum		D	Deceased
4-Jan-71		Louis G. DeSonier,Jr.	10/1978 - 10/1979	A	
4-Jan-71		Nestor L. Currault, Jr.	10/1979 - 10/1980	C	Crt. of Appeals
16-Oct-72		Thomas C. Wicker, Jr.		H	Crt. of Appeals
8-Dec-72	7-Apr-89	Wallace C. LeBrun		I	Deceased
20-May-75	19-Oct-90	Alvin Rudy Eason	1983	K	Deceased
27-Jun-75		Patrick E. Carr		J	Deceased
28-May-78		Walter E. Kollin	1984	D	Retired
1-Jan-79		Lionel R. Collins	1985	L	Deceased
1-Jan-79		Robert J. Burns	1986	M	Retired
31-Dec-79		Jacob L. Karno	1987	J	Retired
1-Jan-82		James L. Cannella	1989	N	Crt. of Appeals
1-Jan-82		Ronald P. Lourniet	1988	O	Retired
* 5-Mar-82		Roy L. Price		A	
30-Jun-82		Clarence E. McManus	1990	E	Crt. of Appeals
29-Jul-82		M. Joseph Tiemann	1991	G	Retired
4-Aug-82	31-Dec-91	Joseph F. Grefer		C	Retired - Drug Crt.
19-Dec-84		G. Thomas Porteous, Jr.	1992	A	U.S. District Crt.
31-Jan-86		Ernest V. Richards, IV	1993	B	Retired
28-Apr-86	6-Jun-93	Hubert A. Vondenstein		H	Deceased
18-Dec-87	22-Jan-88	Patrick J. McCabe	1/1994 -12/1995	F	
2-Nov-88		Charles V. Cusimano, II	1/1996 - 12/1997	L	Retired
18-Dec-90	1-Jan-91	Jo Ellen Grant	1/1998 - 12/1999	I	Retired
29-Dec-90	1-Jan-91	Martha Sassone	1/2000 - 12/2001	K	Defeated 11/04/2009
21-Sep-92		Susan M. Chehardy		N	Crt. of Appeals
9-Oct-92		Melvin C. Zeno	1/2002 - 12/2004	P	Retired
23-Oct-92		Alan J. Green		C	Removed from bench
25-May-94		Kernan A. Hand		H	Retired
2-May-95		Walter J. Rothschild		A	Crt. of Appeals
1-Jan-97		Sheldon G. Fernandez		J	Deceased
30-Dec-96	1-Jan-97	Robert A. Pitre, Jr.	1/2005 - 12/2007	G	
27-Dec-96	1-Jan-97	Henry G. Sullivan, Jr.	1/2008 - 12/2009	M	
27-Dec-96	1-Jan-97	Robert M. Murphy	1/2010 -	D	
1-Jan-97		Fredericka H. Wicker		B	Crt. of Appeals
1-Jan-97		Marion F. Edwards		O	Crt. of Appeals
5-Apr-99		Ronald D. Bodenheimer		N	Did not seek re-election
7-May-99		Ross P. LaDart		O	
13-Oct-00		Greg Gerard Guidry		E	Crt. Of Appeals
23-Oct-00		Stephen J. Windhorst		J	
31-May-01		Joan S. Benge		A	Removed
26-Nov-02		Hans J. Liljeberg		N	
11-Apr-06		June Berry Darensburg		C	
10-Oct-06		Cornelius E. Regan		B	
2-Mar-07		John J. Molaison, Jr.		E	
30-Nov-07		Donald A. Rowan, Jr		L	
1-Jan-09		Glenn B. Ansardi		H	
1-Jan-09		Ellen Shirer Kovach		K	
1-Jan-09		Nancy A. Miller		I	
1-Jan-09		Lee V. Faulkner, Jr.		P	
28-May-10		Raymond S. Steib, Jr		A	

PORT Exhibit 1007

24th Judicial District Court
Judges by Year
1924 - 2010

	1924	1944	1951	1955	1960	1964	1966	1969	1971
A	L. Robert Rivard	L. Robert Rivard	L. Julian Samuel	L. Julian Samuel	Edward J.Stoulig	Edward J.Stoulig	Edward J.Stoulig	Edward J.Stoulig	Louis G. DeSonier,Jr.
B		Leo W. McCune	Leo W. McCune	Leo W. McCune	Frederick J. R. Heebe	Frederick J. R. Heebe	Frank V. Zaccaria	Frank V. Zaccaria	Frank V. Zaccaria
C				John C. Boutall	John C. Boutall	John C. Boutall	John C. Boutall	John C. Boutall	Nestor L. Currault, Jr.
D					Robert G. Hughes	Robert G. Hughes	Robert G. Hughes	Gordon L. Bynum	Gordon L. Bynum
E						Fred S. Bowes	Fred S. Bowes	Fred S. Bowes	Fred S. Bowes
F							Floyd W. Newlin	Floyd W. Newlin	Floyd W. Newlin
G							H. Charles Gaudin	H. Charles Gaudin	H. Charles Gaudin
H									
I									
J									
K									
L									
M									
N									
O									
P									

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24th Judicial District Court
Judges by Year
1924 - 2010

	1972	1975	1978	1979	1982	1984	1986
A	Louis G. DeSonier,Jr.	Louis G. DeSonier,Jr.	Louis G. DeSonier,Jr.	Louis G. DeSonier,Jr.	Roy L. Price	G. Thomas Porteous, Jr.	G. Thomas Porteous, Jr.
B	Frank V. Zaccaria	Frank V. Zaccaria	Frank V. Zaccaria	Frank V. Zaccaria	Frank V. Zaccaria	Frank V. Zaccaria	Ernest V. Richards, IV
C	Nestor L. Currault, Jr.	Nestor L. Currault, Jr.	Nestor L. Currault, Jr.	Nestor L. Currault, Jr.	Joseph F. Grefer	Joseph F. Grefer	Joseph F. Grefer
D	Gordon L. Bynum	Gordon L. Bynum	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin
E	Fred S. Bowes	Fred S. Bowes	Fred S. Bowes	Fred S. Bowes	Clarence E. McManus	Clarence E. McManus	Clarence E. McManus
F	Floyd W. Newlin	Floyd W. Newlin	Floyd W. Newlin	Floyd W. Newlin	Floyd W. Newlin	Floyd W. Newlin	Floyd W. Newlin
G	H. Charles Gaudin	H. Charles Gaudin	H. Charles Gaudin	H. Charles Gaudin	M. Joseph Tiemann	M. Joseph Tiemann	M. Joseph Tiemann
H	Thomas C. Wicker, Jr.	Thomas C. Wicker, Jr.	Thomas C. Wicker, Jr.	Thomas C. Wicker, Jr.	Thomas C. Wicker, Jr.	Thomas C. Wicker, Jr.	Hubert A. Vondenstein
I	Wallace C. LeBrun	Wallace C. LeBrun	Wallace C. LeBrun	Wallace C. LeBrun	Wallace C. LeBrun	Wallace C. LeBrun	Wallace C. LeBrun
J		Patrick E. Carr	Patrick E. Carr	Jacob L. Karno	Jacob L. Karno	Jacob L. Karno	Jacob L. Karno
K		Alvin Rudy Eason	Alvin Rudy Eason	Alvin Rudy Eason	Alvin Rudy Eason	Alvin Rudy Eason	Alvin Rudy Eason
L				Lionel R. Collins	Lionel R. Collins	Lionel R. Collins	Lionel R. Collins
M				Robert J. Burns	Robert J. Burns	Robert J. Burns	Robert J. Burns
N					James L. Cannella	James L. Cannella	James L. Cannella
O					Ronald P. Loumiet	Ronald P. Loumiet	Ronald P. Loumiet
P							

DEF00870

24th Judicial District Court
Judges by Year
1924 - 2010

	1987	1988	1991	1992	1994	1995	1997
A	G. Thomas Porteous, Jr.	G. Thomas Porteous, Jr.	G. Thomas Porteous, Jr.	G. Thomas Porteous, Jr.	G. Thomas Porteous, Jr.	Walter J. Rothschild	Walter J. Rothschild
B	Ernest V. Richards, IV	Ernest V. Richards, IV	Ernest V. Richards, IV	Ernest V. Richards, IV	Ernest V. Richards, IV	Ernest V. Richards, IV	Fredericka H. Wicker
C	Joseph F. Grefer	Joseph F. Grefer	Joseph F. Grefer	Alan J. Green	Alan J. Green	Alan J. Green	Alan J. Green
D	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin	Walter E. Kollin	Robert M. Murphy
E	Clarence E. McManus	Clarence E. McManus	Clarence E. McManus	Clarence E. McManus	Clarence E. McManus	Clarence E. McManus	Clarence E. McManus
F	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe
G	M. Joseph Tiemann	M. Joseph Tiemann	M. Joseph Tiemann	M. Joseph Tiemann	M. Joseph Tiemann	M. Joseph Tiemann	Robert A. Pitre, Jr.
H	Hubert A. Vondenstein	Hubert A. Vondenstein	Hubert A. Vondenstein	Hubert A. Vondenstein	Kernan A. Hand	Kernan A. Hand	Kernan A. Hand
I	Wallace C. LeBrun	Wallace C. LeBrun	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant
J	Jacob L. Karno	Jacob L. Karno	Jacob L. Karno	Jacob L. Karno	Jacob L. Karno	Jacob L. Karno	Sheldon G. Fernandez
K	Alvin Rudy Eason	Alvin Rudy Eason	Martha Sassone	Martha Sassone	Martha Sassone	Martha Sassone	Martha Sassone
L	Lionel R. Collins	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II
M	Robert J. Burns	Robert J. Burns	Robert J. Burns	Robert J. Burns	Robert J. Burns	Robert J. Burns	Henry G. Sullivan, Jr.
N	James L. Cannella	James L. Cannella	James L. Cannella	Susan M. Chehardy	Susan M. Chehardy	Susan M. Chehardy	Susan M. Chehardy
O	Ronald P. Loumiet	Ronald P. Loumiet	Ronald P. Loumiet	Ronald P. Loumiet	Ronald P. Loumiet	Ronald P. Loumiet	Marion F. Edwards
P				Melvin C. Zeno	Melvin C. Zeno	Melvin C. Zeno	Melvin C. Zeno

DEF00871

24th Judicial District Court
Judges by Year
1924 - 2010

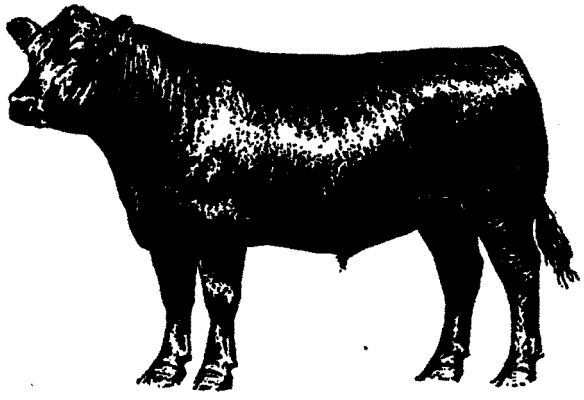
	1999	2000	2001	2002	2006	2007	2009
A	Walter J. Rothschild	Walter J. Rothschild	Joan S. Benge	Joan S. Benge	Joan S. Benge	Joan S. Benge	Joan S. Benge
B	Fredericka H. Wicker	Fredericka H. Wicker	Fredericka H. Wicker	Fredericka H. Wicker	Cornelius E. Regan	Cornelius E. Regan	Cornelius E. Regan
C	Alan J. Green	Alan J. Green	Alan J. Green	Alan J. Green	June Berry Darensburg	June Berry Darensburg	June Berry Darensburg
D	Robert M. Murphy	Robert M. Murphy	Robert M. Murphy	Robert M. Murphy	Robert M. Murphy	Robert M. Murphy	Robert M. Murphy
E	Clarence E. McManus	Greg Gerard Guidry	Greg Gerard Guidry	Greg Gerard Guidry	Greg Gerard Guidry	John J. Molaison, Jr.	John J. Molaison, Jr.
F	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe	Patrick J. McCabe
G	Robert A. Pitre, Jr.	Robert A. Pitre, Jr.	Robert A. Pitre, Jr.	Robert A. Pitre, Jr.	Robert A. Pitre, Jr.	Robert A. Pitre, Jr.	Robert A. Pitre, Jr.
H	Kernan A. Hand	Kernan A. Hand	Kernan A. Hand	Kernan A. Hand	Kernan A. Hand	Kernan A. Hand	Glenn B. Ansardi
I	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant	Jo Ellen Grant	Nancy A. Miller
J	Sheldon G. Fernandez	Stephen J. Windhorst	Stephen J. Windhorst	Stephen J. Windhorst	Stephen J. Windhorst	Stephen J. Windhorst	Stephen J. Windhorst
K	Martha Sassone	Martha Sassone	Martha Sassone	Martha Sassone	Martha Sassone	Martha Sassone	Ellen Shirer Kovach
L	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II	Charles V. Cusimano, II	Donald A. Rowan, Jr	Donald A. Rowan, Jr
M	Henry G. Sullivan, Jr.	Henry G. Sullivan, Jr.	Henry G. Sullivan, Jr.	Henry G. Sullivan, Jr.	Henry G. Sullivan, Jr.	Henry G. Sullivan, Jr.	Henry G. Sullivan, Jr.
N	Ronald D. Bodenheimer	Ronald D. Bodenheimer	Ronald D. Bodenheimer	Hans J. Liljeberg	Hans J. Liljeberg	Hans J. Liljeberg	Hans J. Liljeberg
O	Ross P. LaDart	Ross P. LaDart	Ross P. LaDart	Ross P. LaDart	Ross P. LaDart	Ross P. LaDart	Ross P. LaDart
P	Melvin C. Zeno	Melvin C. Zeno	Melvin C. Zeno	Melvin C. Zeno	Melvin C. Zeno	Melvin C. Zeno	Lee V. Faulkner, Jr.

DEF00872

24th Judicial District Court
Judges by Year
1924 - 2010

	2010
A	Raymond S. Steiob, Jr.
B	Cornelius E. Regan
C	June Berry Darensburg
D	Robert M. Murphy
E	John J. Molaison, Jr.
F	Patrick J. McCabe
G	Robert A. Pitre, Jr.
H	Glenn B. Ansardi
I	Nancy A. Miller
J	Stephen J. Windhorst
K	Ellen Shirer Kovach
L	Donald A. Rowan, Jr
M	Henry G. Sullivan, Jr.
N	Hans J. Liljeberg
O	Ross P. LaDart
P	Lee V. Faulkner, Jr.

BEEF CONNECTION



Beef Connection Steak House
501 Gretna Boulevard
Gretna, LA 70053
(504) 366-3275

Appetizers

Calamari	8.50
Stuffed Mushrooms	9.00
Barbeque Shrimp	9.00
Shrimp Remoulade	8.50
Shrimp Cocktail	8.50
Fried Mushrooms	7.00
Onion rings	5.00
Garlic Bread	4.50

Sauces

Bearnaise, Hollandaise, Bordelaise	4.50

Gumbo

Chicken and Sausage Gumbo

cup 5.00 *Bowl* 8.00

Vegetables

Broccoli	5.50
Cauliflower	5.50
Brussel Sprouts	5.50
Creamed Spinach	5.50
Sauteed Onions	4.50
Sauteed Mushrooms	5.50
Broiled Tomatoes	5.50

Potatoes

Au Gratin	5.00
Baked with butter	4.00
Baked dressed	5.00
French Fries	4.00
Steak Fries	4.00
Lyonnaise	5.50
Baked Sweet Potato	5.50
Sweet Potato Steak Fries	5.50

Salads

Head Lettuce	5.50
Tossed Salad *large*	5.50
Tossed Salad *small*	4.50
Italian *large*	6.00
Italian *small*	5.00
Sliced Tomato	5.00
Sliced Tomato w/ Purple Onion	6.00
Asparagus	6.00
Emma Lou Salad	14.00
Grilled Chicken Salad	14.00
Grilled Shrimp Salad	17.00

Choice of dressings: Italian, Olive Oil and Red Wine Vinegar, French, Ranch, Bleu Cheese, Thousand Island, Honey Mustard and Remoulade

Au Gratin Vegetables

Potatoes au Gratin	5.00
Spinach au Gratin	5.50
Broccoli au Gratin	5.50
Cauliflower au Gratin	5.50
Asparagus au Gratin	6.00

Desserts

Praline Parfait	6.00
Chocolate Lava Bundt Cake	5.00
Bread Pudding w/ Rum Sauce	5.00
Cheese Cake w/ Fruit Topping	5.00
Creme Brulee Cheesecake	5.00
Chocolate Sundae	4.00
Vanilla or Chocolate Ice Cream	3.00

5555

Welcome to the Beef Connection!

Here at the **Beef Connection,** *we always start with the highest quality grain-fed beef which gives you that rich beef flavor, cooked "the way you like it". With our high temperature infrared radiant heat broiler, we cook your steak very rapidly. This special broiling process seals in your steak's own natural juices, flavor and tenderness, allowing us to serve you the finest steaks you'll find anywhere.*

We invite you to relax and enjoy your meal.

Steaks • Seafood

NEW YORK STRIP	*small* **28.00**	*large* **34.00**
FILET	*small* **28.00**	*large* **34.00**
RIBEYE	*small* **24.00**	*large* **30.00**
T-BONE 16oz.		**30.00**
VEAL RIB CHOPS	*small* **22.00**	*large* **36.00**
LAMB RIB CHOPS	*small* **24.00**	*large* **38.00**
PORK CHOP 10oz.		**12.00**
MARINATED CHICKEN BREAST 8oz.		**10.00**
LIVE MAINE LOBSTER per lb.		**26.00**
YELLOW FIN TUNA	*small* **12.00**	*large* **20.00**
SALMON	*small* **14.00**	*large* **22.00**
RED SNAPPER	*small* **10.00**	*large* **16.00**
BARBECUED SHRIMP		**17.00**
FRIED SHRIMP with fries		**17.00**

RARE Very red, cool center; MEDIUM RARE Red, warm center;
MEDIUM Pink center; MEDIUM WELL Slightly pink center;
WELL Broiled throughout, no pink.

Wines by the Glass

Cabernet
Merlot
Pinot Noir
Chianti
Chardonnay
Shiraz
White Zinfandel
Pinot Grigio

Beverages

Irish Coffee	9.00
Tia Maria Coffee	9.00
Coffee, Tea	2.00*
7-Up, Cokes	2.00*
Root Beer	2.00
Bottled Spring Water	2.00
Perrier Water	3.00

*Free Refills

Beer and Cocktails

15% Gratuity party of 8 or more

Beef Connection
PARTY MENU

Small Entree — $33.00 per person

Choice of 1:

Filet	8oz.
Ribeye	8oz.
Chicken Breast	8oz.
Snapper	8oz.

Baked Potato or French Fries
Salad
Onion Ring Appetizer - One Order for every 3 people

Dessert- Cheese Cake or Bread Pudding
Coffee - Tea - Coke - Seven-Up

* Above order does not include alcohol, gratuity or tax

Large Entree — $40.00 per person

Same Menu as above but with larger
Entree Portions

* Above order does not include alcohol, gratuity or tax

Lunch Specials

Sunday - Friday 11:30 to 4:00

Mondays Only	Red Beans and Rice with sausage*	12.00
Fridays Only	Fried Catfish with French Fries*	12.00

Daily

	A la Carte	Complete*
Small New York Strip	28.00	32.00
Small Filet	28.00	32.00
Small Ribeye	24.00	28.00
Veal Rib Chop	24.00	28.00
Lamb Rib Chop	26.00	32.00
Pork Chop	12.00	16.00
Chicken Breast	10.00	14.00
Barbecued Shrimp	17.00	21.00
Fried Shrimp	17.00	21.00
Salmon	14.00	18.00
Red Snapper	10.00	14.00
Tuna	12.00	16.00
Grilled Chicken Salad		14.00
Grilled Shrimp Salad		20.00

** For a complete meal, all of the above served with baked potato, au gratin potatoes or french fries and either salad, chicken and sausage gumbo.*

G. CALVIN MACKENZIE

Colby College
Waterville, ME 04901
(207) 859-5306
E-mail: gcmacken@colby.edu

127 Main Street
Bowdoinham, ME 04008
(207) 666-8064

EDUCATION

1971 - 1975	**Harvard University,** Cambridge, MA	Ph.D. in Government
1967 - 1969	**Tufts University,** Medford, MA	M.A. in Political Science
1963 - 1967	**Bowdoin College,** Brunswick, ME	B.A. in Government

ACADEMIC EMPLOYMENT

COLBY COLLEGE, Waterville, ME

2008 - 2009 *Chair, Department of Government*

2001 - *Goldfarb Family Distinguished Professor of Government*
(Endowed Chair)

1991 - 2001 *Distinguished Presidential Professor of American Government*
(Endowed Chair)

1992 - 1995 *Chair, Department of Government*

1986 - 1991 *Professor of Government*
Teach courses on American Congress, American presidency, public policy analysis, and public administration.

1985-1988 *Vice President for Development and Alumni Relations*
Directed major capital campaign, annual fund, planned giving, and all alumni relations activities. Supervised staff of 22. College's chief development officer, reporting to the president. On leave from faculty during this period.

1982 - 1986 *Associate Professor of Government* (with tenure)

1980 - 1985
1988 - 1992 *Director, Public Policy Program*

Supervised interdisciplinary program. Worked closely with public policy practitioners, oversaw curriculum, directed independent student projects, made arrangements for speakers and conferences, and organized extensive internship program.

1978 - 1982 *Assistant Professor of Government*

THE GEORGE WASHINGTON UNIVERSITY, Washington, DC

1975 - 1978 *Assistant Professor of Political Science*
Taught graduate and undergraduate courses in the following areas: American national government, the legislative process, public policy analysis, government budgeting, the electoral process, and American political behavior. Taught extensively in the University's graduate program for congressional staff members and executive branch employees.

HARVARD UNIVERSITY, Cambridge, MA

1973 - 1975 *Research Assistant, Government Department*
Teaching Fellow and Tutor, Government Department

ADDITIONAL WORK EXPERIENCE

2005 **BEIJING FOREIGN STUDIES UNIVERSITY, Beijing, China**
Fulbright Lecturer
Taught two courses on American public policy to Chinese graduate students. Lectured at universities all over China.

2002 **NATIONAL COMMISSION ON THE PUBLIC SERVICE (Volcker Commission), Washington DC**
Senior Advisor

2000-2002 **THE BROOKINGS INSTITUTION, Washington DC**
Visiting Fellow
Senior Advisor, Presidential Appointee Initiative
Lead participant in major study of presidential appointment process. Funded by Pew Charitable Trusts.

1999-2000 **INSTITUTE OF UNITED STATES STUDIES, UNIVERSITY OF LONDON, London, England**
The John Adams Fellow
Lectured and participated in seminars during year-long fellowship in London.

1997-1998 **NATIONAL ACADEMY OF PUBLIC ADMINISTRATION,** Washington DC
Project Director, Re-Engaging Citizens in Governance Project
Directed extensive study of low levels of citizen trust and civic engagement in government. Provided support to distinguished panel chaired by Paul Volcker.

Managed all research and development of databases. Author of panel report. Funded by Pew Charitable Trusts.

1996-1999 MAINE STATE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Chair, 1996-1997; Member, 1997-1999
Elected chair of state agency that oversees campaign practices, campaign finances, and legislative ethics. Engaged in implementing one of the country's boldest initiatives in campaign finance reform.

1994 - 1997 TWENTIETH CENTURY FUND, New York, NY
Executive Director, Task Force on Presidential Appointments
Supervised studies and report preparation for Task Force chaired by former Senators John Culver (D-IA) and Charles Mathias (R-MD).

1993 - 1998 MAINE STATE BOARD OF ARBITRATION AND CONCILIATION
Alternating Chair
Implemented state policy in public sector labor-management relations.

1992 NATIONAL ACADEMY OF SCIENCES
Member, Panel on Presidentially Appointed Scientists and Engineers
Participated in extensive study of difficulties in recruiting scientists for government service. Contributed to panel's report, Science and Technology Leadership in American Government.

1988 NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, Washington DC
Issue Leader, Presidential Transitions Study
Prepared study and recommendations on personnel selection and conflict of interest for panel report on presidential transition of 1988.

1983 - 1990 NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, Washington DC
Director, Presidential Appointee Project
Supervised comprehensive analysis of presidential appointment process. Wrote project proposal, participated in fund raising, managed all details of project, supervised full- and part-time staff of 13. Full-time 1984-85, while on academic leave.

1980 NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, Washington DC
Staff member, Presidential Transition Study
Conducted historical studies of personnel management activities of recent American presidents, relying primarily on original source materials in presidential libraries and interviews with former White House aides. Provided recommendations for improvements in presidential personnel management for inclusion in study panel's report.

1977 UNITED STATES HOUSE OF REPRESENTATIVES, Washington DC
Senior Research Analyst, Commission on Administrative Review
Worked full-time for the Commission while on academic leave. Participated in a comprehensive analysis of every aspect of legislative and administrative operations in the House of Representatives. Duties included interviewing members of Congress, direct contact with congressional officers and employees, examination of House records and accounts, and analysis of statistical data. Prepared original papers on

House financial management system, House procurement activities, and operating procedures of the House administrative system. Had primary responsibility for writing several hundred page report of the Task Force on Administrative Units.

1975 - Present **VARIOUS EMPLOYERS**
Lecturer and Consultant
Clients have included: the Robert A. Taft Institute, the Pew Charitable Trusts, the Robert Wood Johnson Clinical Scholars program, the U.S. Treasury Executive Institute, Commission on the Operation of the U.S. Senate, and the Brookings Conference for Senior Business Executives. Served as regular guest lecturer at the Washington International Center. Appear often on local and network radio and television programs. Consult broadly on government operations with public agencies, presidential transition teams, national commissions, and foundations.

1969 - 1971 **UNITED STATES ARMY**
Private to Sergeant, First Cavalry Division, Vietnam
Awarded Vietnamese Cross of Gallantry, Army Commendation Medal (three times), Bronze Star (twice), Good Conduct Medal. Honorable Discharge, 1975.

SCHOLARLY AND PROFESSIONAL ACTIVITIES

1975 - Present **Panel Participant**
Chaired, delivered papers or otherwise participated in several dozen panels at meetings of professional and governmental organizations including: American Political Science Association, Midwest Political Science Association, Southwest Social Science Association, Naval War College, Administrative Conference of the United States, National Academy of Public Administration, National Academy of Sciences, Brookings Institution.

1982 - 2007 **Member, Editorial Board,** ***Congress and the Presidency***

1986 - 1987 **President, New England Political Science Association** (elected position)

1987 - Present **Member, Editorial Board,** ***Commonwealth***

1986 - 1998 **Overseer and Trustee, Bowdoin College,** Brunswick, ME

2003- Present **Member, Editorial Board,** ***New England Journal of Political Science***

2004 Elected a **Fellow of the National Academy of Public Administration,** Washington, DC

PRINCIPAL PUBLICATIONS

Now What: Confronting and Resolving Ethical Questions (with Sarah V. Mackenzie), San Francisco: Corwin Press, 2010.

The Liberal Hour: Washington and the Politics of Change in the 1960s (with Robert Weisbrot), New York: Penguin, 2008.
Finalist for the 2009 Pulitzer Prize in History
Selected by CHOICE as an "Outstanding Academic Book of 2008"

Conflict and Consensus in American Politics, (with Stephen Wayne and Richard Cole), Belmont, CA: Thomson Wadsworth, 2007.

Scandal Proof: Can Ethics Laws Make Government Ethical? Washington: Brookings, 2002.

Innocent Until Nominated: The Breakdown of the Presidential Appointment Process, (editor), Washington: Brookings, 2001.
Selected by CHOICE as an "Outstanding Academic Book of 2002"

The Politics of American Government, (with Stephen Wayne, David O'Brien, and Richard Cole), New York: St. Martin's, third edition, 1999.

Obstacle Course: Report of the Twentieth Century Fund Task Force on Presidential Appointments, New York: Twentieth Century Fund Press, 1996.

The Irony of Reform: Roots of American Political Disenchantment, Boulder: Westview Press, 1996
Selected by CHOICE as an "Outstanding Academic Book of 1996"

Bucking the Deficit: Economic Policy Making in the United States (with Saranna Thornton), Boulder: Westview Press, 1996

Who Makes Public Policy: The Struggle For Control Between Congress and the Executive (with Robert Gilmour et al), Chatham, NJ: Chatham House, 1994.

The Presidential Appointee's Handbook, Washington, DC: National Academy of Public Administration, 2d. ed., 1988.

The In and Outers: Presidential Appointees and Transient Government in Washington (editor), Baltimore: Johns Hopkins University Press, 1987.

American Government: Politics and Public Policy, New York: Random House, 1986.

Leadership in Jeopardy: The Fraying of the Presidential Appointments System, Washington, DC: National Academy of Public Administration, 1985.

America's Unelected Government (with Bruce Adams, John Macy, and Jackson Walter), New York: Harper & Row, 1983.

The Abortion Dispute and the American System (with Gilbert Steiner et al.), Washington, D.C.: Brookings, 1983.

The House at Work (co-editor with Joseph Cooper), Austin, TX: University of Texas Press, 1981.

The Politics of Presidential Appointments, New York: The Free Press, 1981.

A SAMPLE OF ARTICLES, REPORTS, REVIEWS, PAPERS, AND BOOK CHAPTERS, 1988-PRESENT

Co-editor, Special edition of The New England Journal of Political Science on "U.S. Senators from Maine: Fifty Years of Influencing the Nation"

"Looking to the Future: The Challenge to Congress" (White Paper, The Brademas Center for the Study of Congress, 2008)

"The Real Invisible Hand: Presidential Appointees in the Administration of George W. Bush" in David C. Rochefort, ed., Quantitative Methods in Practice (CQ Press, 2006)

"The Superpower Everyone Loves to Hate" in Papers on American Studies (Yunnan University Press, China, 2006)

"Old Wars, New Wars, and the American Presidency," in George C. Edwards and Philip John Davies, eds., New Challenges for the American Presidency (New York: Longmans, 2004).

"Can Government Be Honest And Effective, Too?" Keynote Address, 12th Annual Conference Of The U.S. Office Of Government Ethics, March 12, 2003.

"The Real Invisible Hand: Presidential Appointees in the Administration of George W. Bush," PS: Political Science and Politics, March 2002. (Republished in Martha Kumar, ed. White House World (College Station, TX: Texas A&M University Press, 2003).

"Opportunity Lost: The Disappearance of Trust in Government After the 9/11 Spike," (Center for Public Service, Brookings, 2002).

"Campaign Contributions of Clinton and Bush Presidential Appointees: An Analysis," with Michael Hafken (Presidential Appointee Project, Brookings, 2001).

"Testimony on The Presidential Appointment Process," U.S. Senate, 107th Congress, First Session, Committee on Governmental Affairs, Hearings on the Presidential Appointments Improvement Act of 2002 (Washington: Government printing Office, 2001).

"Partisan Presidential Leadership: The President's Appointees," in L. Sandy Maisel, ed., American Parties: Changing Patterns at the Century's End (Boulder, CO: Westview Press, 2001).

"Nasty and Brutish Without Being Short," Brookings Review, March 2001.

Editor, Special Issue of the Brookings Review on "The State of the Presidential Appointment Process," March 2001.

"Ou en est le systeme politique américain?" Le Debat (France: January-February, 2001).

"The Revolution Nobody Wanted," Times Literary Supplement (United Kingdom: October 13, 2000).

"What Ails The Presidential Appointment Process And How To Fix It," Speech at the American Enterprise Institute, Washington, DC, May 5, 1999.

"A Government to Trust and Respect: Rebuilding Citizen-Government Relations in the 21st Century," National Academy of Public Administration (1999).

"Starting Over: The Presidential Appointment Process in 1997." A Twentieth Century Fund White Paper (New York: Twentieth Century Fund, 1998).

"What Would Madison Think? The Prospects, Promise and Perils of the Internet in American Government and Politics," Paper presented at the annual meeting of the New England Political Science Association, New London, CT (1997).

"Government Bit By Bit: Public Affairs, The Internet, and The Future," A White Paper for The Pew Charitable Trusts, (1996).

"Improving Government Performance," A White Paper for the Pew Charitable Trusts, (1995).

"Senator George Mitchell and the Constitution," Maine Law Review, Spring 1995.

"The Presidential Appointment Process: Historical Development, Contemporary Operations, and Current Issues" (Background paper for the Twentieth Century Fund, 1995).

"Radical Makeover: The Post-War Transformation of the American Presidency," Paper presented at the annual meeting of the American Political Science Association, Washington, DC (September, 1993).

"The Political Team," Government Executive (December, 1992).

"Presidential Appointments," "Recess Appointments," and "Senatorial Courtesy" in The Encyclopedia of the United States Congress (Simon and Schuster, 1993).

"Advice and Consent," The Appointment Power," "Recess Appointments," "Hubert H. Humphrey," and "The Vacancy Act" in The Encyclopedia of the American Presidency (Simon and Schuster, 1993).

"Congressional Term Limits: Predictable Impacts and Unintended Consequences," Paper presented at the annual meeting of the New England Political Science Association, Providence, Rhode Island (1991).

"Fallacies of Political Correctness," Chronicle of Higher Education (September 4, 1991).

"Hubert H. Humphrey: Reflections on a Twentieth Century Life" in "The Legacy of Hubert H. Humphrey," Special Issue of Perspectives on Political Science (Winter, 1992).

Editor, "The Legacy of Hubert H. Humphrey," Special Issue of Perspectives on Political Science (Winter, 1992).

"Professionalism and Politics: Executive Recruitment in Washington," in R.H. Perry and Janet Jones-Parker, eds., The Executive Search Collaboration (Greenwood Press, 1990).

"Foreign Aid and Human Rights," Paper presented to the Panel on Congressional-Executive Relations, National Academy of Public Administration (May 1990).

"Appointing Mr. (or Ms.) Right," Government Executive (April 1990).

"The Election of 1960," "Dwight D. Eisenhower," "Richard M. Nixon" in Encyclopedia of American Political Parties and Elections (Garland Publishing Co., 1990).

"Issues and Problems in the Staffing of New Administrations," Political Science Teacher (Summer 1989).

"Pentagon on Hold," Boston Globe (March, 1989).

"Making Political Appointments" in The Executive Presidency: Federal Management for the 1990s (Washington: National Academy of Public Administration, 1988).

"Presidential Transitions and the Ethics in Government Act of 1978," Sourcebook on Government Ethics for Presidential Appointees (Washington: Administrative Conference of the United States, 1988).

LOCAL BANKRUPTCIES

Local business and individual bankruptcies filed between March 30 and Thursday at the U.S. Bankruptcy Court in New Orleans.

CHAPTER 7

Under Chapter 7, the debtor liquidates assets in order to pay debts being discharged.

Mortgage for debts being discharged.
Bradley L. Allen, 788 Pine Tree St., Slidell
Wanda J. Allen, 4700 Saint A. Apartment 102, New Orleans
Peter W. Alexander, 6800 Senegal Ave. Apt. F, New Orleans
David Alonso, 1781 S. Clayton St., New Orleans
Stanley and **Lisa C. Anderson**, 161 Hackney North, Slidell
Mickey Marie Angelloz, 2724 Republic St., New Orleans
Alba Lucille Ashfield, 23631 Freedom St., Chalmette
Marlon E. Avella, 3005 Patrick Place, Harvey
Nadia Lynnette Ayala, 2224 Law Ave., Apt. B1, Metairie
Debra Bailey and **Herbert Ott**, 7600 Seminole Ave., New Orleans
Chester Henry Bailey Banks, 69081 Baton Rouge, Slidell
Jean Lee Bell, 4220 Old St. Joseph Rd., Apt. 1, New Orleans
Karen Lee and **Roberto Eduardo Benitez**, 2621 Dolphin Drive, Marrero
Mary Martin Berthier, 25 South Hennessey Apartment 5, New Orleans
Dale Bertolla, 303 Belle Isle St., New Orleans
Barbara Bingle and **Michael Beuerbach**, Heinerts Point, Huntsville
Chadsworth Blvd. Apt. 1006, Hinsdale
Jason Bonnette and **Mary Elizabeth Escalante**, 8053 Maumelle Road, Mary Lynn Escalante
Edna Joyce and **Reginald Lee Donelley**, 320 Bellevue, Lockport
Michelle John Bonilla, 301 Hopkin St., New Orleans
Michelle L. Bonilla, 2882 Gladiolus St., New Orleans
Bobbie Mitt and **Brandon Michael Bolton**, 3705 Alphonse Drive, Violet
Michael and **Michelle Mattheny Bordelon**, 7201 Lee St. Soldiers Ac., 3206 N. Rochester St., New Orleans
Jennifer Haggard Bourgeois III, 907 Forrest St., Destrehan
Bradley A. and **Terri A. Cooper**, 44334 C.E. Stanford Road, Hammond
Lionel Bourgeois (aka Livingston Gaspard), 853 W. Pinewood Drive, Slidell
Charles Dorsh and **Merle Bernet Boutilles**, 172 Kenneth Edward Breeze, 936 Crystal Drive, Harvey
Jessica Lynn Brandon, 1000 Lafayette St., Apt. 1, New Orleans
William Ben Burlington, Post Office Box 1651, Springfield
Henri Emanuel Bustillo, 4300 Salem Place Apt. 944, New Orleans
Sherri A. Bumthier Bietz, 601 Village Drive North Apt. 1, Mandeville
Jeffrey Lee and **Peggy Wilson**, 1018 W. 30th Ave., Covington
Antoinette Bilbo, 6504 Vi St. Anthony St., New Orleans
Christopher Lee Cabaniss, 2400 Magazine St. Apt. 5, New Orleans
Elizabeth Bendolph, 3808 So I 10 Ser Rd. Apt # 301, Metairie
Arthur Lewis Brookins, 3920 Ovic St., Metairie
Lashon Phillip and **Kathleen C. Hall Gilmer Burks**, 63 Aspendell Place, Montpelier
Everyday Industries Incorporated, 3944 Chef Menteur Hwy., New Orleans
Mark Martin Barthe, 25 South Hennessey Apartment 5, New Orleans
Dale Bertolla, 303 Belle Isle St., New Orleans
Barbara Bingle and **Michael Beuerbach**, Heinerts Point, Huntsville
Robert Garbright, 6765 North Olympia, New Orleans
Marvin L. and **William E. Gillen**, P. O. Box 478, Ashland, Ky.
Maureen E. and **Thuyet Joseph Giordano**, 3701 I-7 Bldg. 3040 Darrin St., Lafitte
Brian M. Lopez, 6321 Lorraine St., Metairie
Eugene Gerry and **Jeanette Bernard Mamiel**, 2602 Tchoupitoulas St., New Orleans
Donald B. Gardella, P.O. Box 465, Ridgeland, Miss.
Thomas Arthur Greaves, 814 Kenilworth St., New Orleans
Jeffrey and **Jennifer Post Hamsdel**, 61037 Hosedown Rd., Ponchatoula
Cheryl Bennett Harris, 3219 Marina Drive, New Orleans
Roy Anthony Harrison, 4421 Alvar St., New Orleans
Khalil M. Bakhit, 2721 E. 7th Ave., Covington
Barbara Hayes, 816 North Hoodoo St., New Orleans
Sebastian A. Hebert, 1009 Francis St., Morrero
Randall L. and **Janis L. Carter Hess**, 21005 Wilson Drive, Ponchatoula
Matthew Andrew and **Sally Bernard Hedrick, Jr.**, 42 Ridgewood Dr., Mandeville
Michael G. Hess, 223 Pontiere Lane, Slidell
Michael S. Herbert, 29700 Rick Jenkins Road, Bush
Jeffrey Joseph Howard, 1501 Warrington Dr., Apt. E, New Orleans
John C. and **Shirley A. Hodges**, 332 Willowbrook Drive, Slidell
Cynthia D. Hoosemon, 61 39587 Wilkinson Rd., Apt. 1, Covington
Shirley S. Jackson, 6405 Franklin Ave., New Orleans
Arthur L. and **Bobbie L. Jacobson III**, 336 Green wood Plantation Rd., Thibodaux
Lenwin S. Jacobus-Veit, PO Box 64585, Kenner
Ernesto Jaramillo Incorporated, 3944 Chef Menteur Hwy., New Orleans
Carol Ann Jones, 1600 Annes Blvd., Marrero
Adam J. and **Dawn T. Fabre**, 3501 Hotel Drive, River Ridge
Hasan Mensah Ferguson, 308 Riverridge Drive, Apartment D, Bridge
Tonja L. Fink, 340 South Cortez St., New Orleans
Robert Ogea Kelly Jr., 1707 Carrollton St., Apt. 7, New Orleans
Christine Burk and **Ronald Jerome Kennedy**, 5005 N.
Bonnie G. and **Michael R. Linker**, P. O. Box 6586, Gerry
Michael Joseph and **Angela Marie Robinson Littleton**, 3040 Darrin St., Lafitte
Rita M. Lopez, 6321 Lorraine St., Metairie
Eugene Gerry and **Jeanette Bernard Mamiel**, 2602 Tchoupitoulas St., New Orleans
Donald B. Gardella, P.O. Box 465, Ridgeland, Miss.
Thomas Arthur Greaves, 814 Kenilworth St., New Orleans
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Barbara Hayes, 816 North Hoodoo St., New Orleans
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Randall L. and **Janis L. Carter Hess**, 21005 Wilson Drive, Ponchatoula
Matthew Andrew and **Sally Bernard Hedrick, Jr.**, 42 Ridgewood Dr., Mandeville
Michael G. Hess, 223 Pontiere Lane, Slidell
Michael S. Herbert, 29700 Rick Jenkins Road, Bush
Jeffrey Joseph Howard, 1501 Warrington Dr., Apt. E, New Orleans
John C. and **Shirley A. Hodges**, 332 Willowbrook Drive, Slidell
Cynthia D. Hoosemon, 61 39587 Wilkinson Rd., Apt. 1, Covington
Shirley S. Jackson, 6405 Franklin Ave., New Orleans
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Lenwin S. Jacobus-Veit, PO Box 64585, Kenner
Ernesto Jaramillo Incorporated, 3944 Chef Menteur Hwy., New Orleans
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Adam J. and **Dawn T. Fabre**, 3501 Hotel Drive, River Ridge
Hasan Mensah Ferguson, 308 Riverridge Drive, Apartment D, Bridge
Tonja L. Fink, 340 South Cortez St., New Orleans
Robert Ogea Kelly Jr., 1707 Carrollton St., Apt. 7, New Orleans
Christine Burk and **Ronald Jerome Kennedy**, 5005 N.
Oliver, St. E
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Loans
Jennifer B
Cheryl D. A
Darrell Ba
Beverly Ba
Griffin St., H
Sandra Lo
Ruth F. Ayc
Thibodaux
Joan A. Ba
Loans
Leslie B. B
Henri E. Bo
Earl D. Br
Jessica Ann
Betty A. Bu
Dorothy L.
Sandra Lo
Ruth F. Ayc
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Joan A. Ba
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Leslie B. B
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Earl D. Br
Jessica Ann
Betty A. Bu
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Sandra Lo
Ruth F. Ayc
Thibodaux
Joan A. Ba
Loans
Leslie B. B
Henri E. Bo
Earl D. Br
Jessica Ann
Betty A. Bu
**Dorothy L.

LOCAL BANKRUPTCIES

Local business and individual bankruptcies filed between March 30 and Thursday at the U.S. Bankruptcy Court in New Orleans.

CHAPTER 7

Under Chapter 7, the debtor liquidates assets in exchange for debts being discharged.

Manuel Aguilar, 124 Emerson Drive, Kenner
Marilyn L. Alaux, 768 Pine Tree St., Slidell
Wendell J. Albert, 4200 Saxon St. Apartment 502, Metairie
Yara M. Alexander, 6820 Seagulf Lane Apt. F, New Orleans
Donald Alvarez, 1716 S. Gayoso St., New Orleans
Chastity and John E. Anderson, 174 Parkway North, Slidell
Dolores Marie Angelado, 2724 Republic St., New Orleans
Alla Lazito Angiado, 2300 Fenelon St., Chalmette
Marian A. Arabie, 3905 Patrick Place, Harvey
Victoria Arguello, 2224 Lake Ave. Apt 101, Metairie
Sherry L. Arvie, 2232 Iberville St., New Orleans
Deborah Raney and Herbert Ash, 7520 Symmes Ave., New Orleans
Santos Ferdinand Augost, 433 Highway 51, Edgard
Eleanor Rasor Spring Badon, 58591 Badon Road, Slidell
Jude A. Barberie Jr., 2615 Attis St., New Orleans
Janet Rose Bel, 58221 Old U.S. 51, Amite
Karen Ann and Roberto Eduardo Benitez, 2621 Buccaneer Drive, Marrero
Adra W. and Michael W. Benson, P.O. Box 903, Sun
Mary Marie Bentley, 126 South Hennessey Apartment 5, New Orleans
Kent Bevolo, 320 Belleville St., New Orleans
Cindy C. and Randy James Bias, PO Box 1355, Amite
Barbara Bolgle and Michael Blanchard, Heavens Drive, Mandeville
Sherry Lales Blankenship, 216 Brett Drive, Gretna
Bonnie J. Bondreaux, 142 Derrick St., Pierre Part
Stephanie L. Bourgeois, 1234 Ave. A, Marrero
Deanna M. Brunet, 2717 Monroe St., Mandeville
Barbara Rutledge Brown, 7106 Wily St., Metairie
Leslie C. Bruns, 2228 Stay Park Lane, St. Bernard
Carol C. Burns, 200 Foxbriar Drive, Slidell
Ginger Bright and Michael Charles Caggiano, 102 Sherry Drive, Hammond
Dian Claudia and Jorge Alberto Castellon, 1402 N. Causeway Blvd. Apt. 1606, Mandeville
James Anthony and Mary Elizabeth Catalanello, 6053 Marshall Foch St., New Orleans
Edna Irene and Hayward Lee Cavalier, 302 Bellevue, Lockport
Christopher John Cavaliere, 991 Mouton St., New Orleans
Michelle S. Charles, 2682 Gladiolus St., New Orleans
Belinda Shah and Stephen Michael Chiffon, 3205 Angelique Drive, Violet
Michael and Michelle McKinney Christopher, 1201 West Esplanade Ave. Apt. 113, Kenner
Lea D. Collins Jr., 1026 N. Rochebleve St., New Orleans
Johnnie Haggard Compton III, 180 Tanner St., Destrehan
Bradley A. and Tara A. Cooper, 44334 C.E. Stafford Road, Franklinton
Harold William and Linda Livingston Copeland, 183 W. Pinewood Drive, Slidell
Charles Curtis and Maria Torres Courtillon, 122 Cherry Creek Drive, Mandeville
James A. Carter, 58562 Highway 1054, Amite
Louis Edward Deano, 1616 Orchid Drive, Harvey
Amanda Voss Davenport, 63 Shady Oaks, Covington
William Dale Deatherage, Post Office Box 160, Springfield
Terri Shanedel Dehlia, 4300 Sutten Place Apt. 9-H, New Orleans
Sharon A. Bardaker Dietz, 601 Vinage Drive Number F 234, Kenner
Lionel L. and Peggy Dillon, 1015 W. 30th Ave., Covington
Antoinette Dillon, 1504 1/2 St. Anthony St., New Orleans
Louis C. Dimitroz, 2400 Magazine St. Apt. 9, New Orleans
Alcegi Joseph Domilsik, 3926 So I-10 Svc Rd. Apt # 301, Metairie
Arthur Louis Duncan, 3920 Civic St., Metairie
William Norman Duncan, P. O. Box 1222, Mandeville
Andre Philip and Catherine Arnett Gaines Davis, 103 Asphodel Place, Mandeville
Estoplast Industries Incorporated, 3844 Chef Menteur Highway, New Orleans
Carol Ann Evans, 1509 Ames Blvd., Marrero
Adam J. and Dawn T. Fabre, 550 Folse Drive, River Ridge
James Wendell Ferguson, 308 Rivermidge Drive Apartment C, Boutte
Tonja B. Flot, 909 South Cortez St., New Orleans
Tracy Jude and Wendy Jean Forsman, 71129 East Bell Rd., Amite
Christopher Sore Forst, 63 Shady Oaks, Covington
Gisela Catherine and Wilma James Franzia, 6161 Highway 39, Braithwaite
Brenda M. Fulkerson, 804 Mar Drive, Lockport
Olga Gabriel, 3901 N. I-10 Service Rd.#pt. C223, Metairie
Lennis Gabriel, 2916 Britannica Drive, Marrero
Kathleen Post and Leonardo Barbaro Gallardo, 2230 6th Ave., Mandeville
Robert Garlapied, 6116 North Olympia, New Orleans
Marie T. and William F. Gillen, P. O. Box 470, Abita Springs
Maureen K. and Vincent Joseph Giordano, 3701 1/2 Cypress St., Metairie
Joe M. and Joseph R. Giordano, 2169 Gibson St., Gretna
Leslie Gonzalez, 4056 E. Louisiana State Drive, Kenner
Thomas Arthur Grosnap, 514 Iberville St., New Orleans
Cathy S. and James Paul Hancock, 62332 Russell-Bown Rd., Roseland
Carol Becket Harris, 5019 Warren Drive, New Orleans
Roy Anthony Harrison, 1421 Alvar St., New Orleans
Kristi M. Hatcher, 222 E. 7th Ave., Covington
Clarence Hayes, 515 North Roberson St., New Orleans
Catherine E. Hebert, 1009 Francis St., Marrero
Charlie L. and Janie L. Carter-Hack, 21356 Wilson Road, Covington
Matthew James and Sally Bernard Hedrick Jr., 42 Granada Drive, Kenner
Gregory S. and Winifred T. Heinz, 1402 N. Causeway Boulevard, Mandeville
Michael D. Hess, 221 Putters Lane, Slidell
Peter John Hingle, 531 West William David Pkwy, Metairie
Michael G. Horton, 24260 Nick Jenkins Road, Bush
Charles Eldridge Howard, 5501 Warrington Dr. Apt. B, New Orleans
John T. and Shirley A. Hudgins, 532 Willowbrook Drive, Gretna
Charles F. and Cynthia D. Hussmann III, 39582 Walnut Drive, Pearl River
Bridget B. Hyde, 2647 Louisiana Ave. Pkwy., New Orleans
Shirley B. Jackson, 6403 Franklin Ave. New Orleans
Arthur L. and Robin A. Jeantreau III, 306 Greenwood Plantation Rd., Thibodaux
Brenda L. Jenkins-Bell, PO Box 641585, Kenner
George Harold and Mary Sue Johnson, 2621 Canyon Drive, Marrero
Keri Johnson, 316 E. 5th St., Edgard
Shirley Ann Jolla, 304 North Elm St. Apt. A, Melanie
Elida Joplin, 2314 Baronne St., New Orleans
Robert Clyde Kelly Jr., 1712 Carrollton St. Apt. 7, Metairie
Christine Clark and Ronald James Kennedy, 1005 N. Carrollton Ave., New Orleans
Ana V. Kerr, 7380 Edgelake Court, New Orleans
Verachareef Kespyer, 8626 Pritchard Place, New Orleans
Janice Leggs, 1460 N. Dorgenois Rd., New Orleans
Laura Villarroe LeBlanc, 1056 Shelby Drive, Westwego
Gary A. Lee, 23085 Bunyard St., Abita Springs
Mary E. Leiter, 313 Idaho Ave., Kenner
Lightning Supply, Inc., 107 Rogers Lane, Houma
Bonnie G. and Michael A. Liker, P. O. Box 659, Garyville
Alfred Joseph and Angela Marie Robinson Littman III, 5136 Bardis St., LaVista
Elvia M. Lopez, 6112 Lorraine St., Metairie
Donald E. Lowe Jr., PO Box 97, Reserve
Eugene Gerry and Jennifer Monson Manuel, 2602 Tilton St., Kenner
Ronald B. Marinello, P.O. Box 442, Mariaux
Sylvia Jane Martin, 5 Honeysuckle Lane, New Orleans
Alison Nowell Mayfield, 1540 Stella Place, Marrero
Diedra McGee, 4560 Viola St., New Orleans
Matthew and Sheila Picou McGovern, 6731 River Road, Waggaman
Kenneth McNabb, 63042 Main St., Angie
Joseph W. and Lelia McGuffy, 2091 Cambrone St., New Orleans
Milton William and Norma Jean Sister Means, 1917 Edgemere Drive, Slidell
Mary Margaret Metz, 2540 Upperline St., New Orleans
Jason Paul Meynard, 436 Taffy Drive, Marrero
Tina L. Michel, 430 Ann Carol St., Houma
Wayne Melvin Mikula, 1620 Seventh St. Apartment C, New Orleans
Denise Woodcock and James Earl Miller, 1009 Fern St., New Orleans
Richard J. Mirabelli, 3331 Burgundy St., New Orleans
Marian Wilson Mitchell, 1732 Touro St., New Orleans
Arthur David and Dawn Marie Monroe, 1914 Fredericks St., Terrytown
Marcos Morales, PO Box 563, Slidell
Mary Christine Munsterman, 3733 Silver Maple Court, New Orleans
Frank R. Nassiff, 1627 Hollygrove St., New Orleans
Calvin Nerolse, Post Office Box 23, Killona
Charlotte M. Nelson, 123 Sunset St. St. Tammany Trailer, Slidell
Daniel Newsom, 4560 Viola St., New Orleans
Emily Hang and Sam Van Nguyen, 4726 Joycelyn Drive, New Orleans
Tuyet Thi Nguyen, 2729 Jeanne Drive, Marrero
Karen T. and Mark Olivez, 6122 Mitchell Ave., Metairie
Amy T. and Carlton Joseph Parfait, 206 Kirby Court, Houma
Elyse B. and Janice Sisane Pellegrin, P. O. Box 527, Abita Springs
Constance Delaune and Norman Dean Pettigrew, 4105 Bee Woods Ct., Marrero
Erika Young and Robert W. Polk, 12217 Mistell Loop Road, Bogalusa
Ariel Prentice, 4056 E. Ca State Dr., Kenner
Linda Ray, 839 North Broad St., New Orleans
Deborah S. and William J. Rein, 826 Robert Blvd., Slidell
Maria Carriere Reveritge, 6805 Veterans Mem. Blvd. #S 16, Metairie
Eric Paul Richardson, 3740 Pauger St., New Orleans
Sean Michael Riley, 733 Carrollwood Village Apartment #194, Gretna
Charles A. and Elizabeth M. Rivera, 3919 Virgil Blvd., New Orleans
Donald and Zella M. Roberts Sr., 719 W. Laverne St., New Orleans
Wilkes and Janet Adams Robertson, 20545 Joner Rd., Hammond
Craig S. and Lisa A. Robichaux, 107 Rogers Lane, Houma
Jeff F. Rogers, 239 Nashville Ave., New Orleans
Randy Rome, RO. Box 502 Hwy. 90 Mathegne's Trailer Park, Des Allemands
Barbara and Martin Schwippenberg, DMB 290 828 Royal St., New Orleans
Eloise and Ezzaloes Scott, 1418 Elysian Blvd., New Orleans
Bonnie Lee Wells Kemp Secora, 630 Ave. C, Bogalusa
Darlene Nicole Sheppard, 1131 Lebouaf St., New Orleans
Abby A. and Kerry T. Soleida, 107 St. Thomas Way, Covington
David L. and Betty T. Simpkins, 929 Ridgefield Road, No.4, Thibodaux
Joann O. Sims, 1108 Molsant St., Kenner
Linda Faye and Ricky Smith, 1709 Wagner St., New Orleans
Tellynn Jourdain Smith, 7500 Fieldston Road, New Orleans
Robert Lee Snyder, P. O. Box 51834, New Orleans
Latonya Speight, 3820 Third St. Apartment 2, New Orleans
Benny and Donna Spriggs, 3465 Vespasian Blvd., New Orleans
Anna C. Swafford, P. O. Box 2304, Covington
Julie Isidat and Shane Anthony Theriot, 137 West 94th St., Cutoff
Loretta M. Theriot, P. O. Box 572, Chauvin
Mary Ann Thomas, 4438 Lafaye St., New Orleans
Lucille Lard and Versell Thompson, 8425 Pum Louis Philippe, Marrero
Josefita Defreze Tonabbee, PO Box 286, Des Allemands
Richard J. Trepre Jr., 238 A. Labarre Drive, Metairie
Sylvia M. Touzeau, 2641 Timshaller Drive, Marrero
Terrence Shelmire and Tyrone Mark Vincent, 8207 Hickory St., New Orleans
Cynthia R. Watkins, 2606 North Rampart St., New Orleans
Stephen Ashley Wetzel, 3311 E. Catahoula Court, Kenner
Michael E. White, 50263 Turnpike Road, Folsom
Kari Lee and Yvonne Smith Wilstrom, 4048 Post Drive, Harvey
Jodi Johnston and Mark Timothy Wilbert, 127 5th St., Bridge City
Trina Nunnell Wilkes, 4101 Eden St., New Orleans
Tunisia Williams, 2131 Robin St., New Orleans
Charmaine Williams, 217 Helen St., Apt. D, Gretna
Carol Scaggs and James Volpe Williams, 1824 Iodd Drive, St.
Barbara A
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Carla Lee
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Joseph Ja
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Loonie B.
Albert C.
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Larry S. I
253, Hou
Jason C. B
Betty B. I
Dorothy I
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Sandra Z
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Don P. Ca
Michelle I
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Mary Lou
Barnes I
Charles I
New Orl
Beverly I
James A.
Mark Jac
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St., Hou
Carol Ann
New Orl
Bertha J
Alvin Jos
Correan

Drive, St.

SETTING UP SHOP

New domestic business incorporations for the New Orleans metro area filed with the Louisiana

Backensto & Backensto, LLC., 219 Marlin Drive, Slidell, 70461, Louis Backenstо Jr.
Backensto & Backensto II, LLC., 219 Marlin Drive, Slidell La 70461, Louis Backenstо Jr.
Back To Normal Physical Rehabilitation, Inc., 321 Hawthorne Drive, Houma, 70360, Robert D. Rice, Nicola Mckeon.
Bay-Tech Equipment Rentals, Inc., 1253 First Ave., Harvey, 70058, William Michael Wills, Bonnye Wills.
Bayou Environmental Services, Inc., 7339 Jay St., New Orleans, 70122, Prentiss K. Deshautreaux, Patrick A. Farrel.
Bayou Loft Restaurant, Inc., 739 Fourth St., Marrero, 70072, Charles P. Shano, Berry D. Bertholo-
70345, April Kuhn Forst.
Bellar Blanch Inc., 6501 Veterans Memorial, Ste. 1/2-3, Metairie, 70003, Mahd Qarout, Azam Laran.
E & H Consultant, Inc., 1714 Polk St., Houma, 70360, Elray P. Forst, Haydie Forst.
Flood Fx, Inc., 4833 General Meyer Ave., New Orleans, 70114, Edward C. Brown.
Edwards, Inc., Et., 46 Adrienne, Madisonville, 70447, Fred T. Edwards.
Fish Services, Inc., 2365 Applan Drive, Kenner, 70065, Patrick B. Fink, Mary V. Fink.
Fish-N-Stuff, Inc., P.O. Box 817, Sun, 70463-0817, Richard W. Beal.
Gill & Associates, Inc., 1218 Gill Road, Tangipahoa,
Kitzten Connection Of Slidell, Inc., 150 Northshore Blvd., Slidell, 70460, Dawn P. Dufresne.
L&A Diesel, Inc., 107 Olde Drive, Belle Chasse, 70037, Alvin I. Hebert.
L&A Lounge, Inc., 107 Olde Drive, Belle Chasse, 70037, Alvin I. Hebert.
Lasaa Tow Motor Co., Inc., 53 Hyacinth Drive, Covington, 70433, Clayton J. Swank II, Jeff Pierott.
Liner Brothers, Inc., 414 Mahler St., Houma, 70363, Joescdie Liner.
Lombard Construction, Inc., 3307 Bridge St., Slidell, 70458, Troy M. Lombard.
Loving Hearts Service Coordinators Of La. Inc., 7111 13 Boston Drive, New Orleans, 70127, Carmen Carter Jr., Glen Lee Dugas.
Lafayette St., New Orleans, 70130, Omega Institute Of Health, Inc.
Bryman Transport, LLC, 216 Scotchpine Drive, Mandeville, 70471-2545, Michael G. Hassett.
C & A Towing, LLC, 32172 Hwy. 11, Buras, 70041, Charles E. Singley Sr., Charlie E. Singley Jr.
C & C Auto Salvage, LLC, 10729 Webb Road, Hammond, 70403, Morris Clint Spears, Clyde Tasch stone, William J. Chaucier Jr.,
Canal Street Investments, LLC, 116 Ivet Court, Lapiace, 70068, Christopher Bardell.
Cardiology Associates Of Slidell, LLC, 1340 14th St., Slidell, 70458, Vasanth Bathala, M.D., Victor Echenique, M.D., Rajmaker Pemperkal, M.D.
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METRO MONEY

Causeway Blvd. Apt. 1806, Mandeville
James Anthony and Mary Elizabeth Catalanotte, 6053 Marshall Foch St., New Orleans
Edna Irene and Hayward Lee Cavalier, 302 Bellevue, Lockport
Christopher John Cavaliere, 861 Moulton St., New Orleans
Michelle S. Charles, 2682 Gladiolus St., New Orleans
Belinda Bath and Stephen Michael Chilton, 3205 Angelique Drive, Violet
Michael and Michelle McKinney Christopher, 1201 West Esplanade Ave. Apt. 113, Kenner
Lee B. Collins Jr., 1026 N. Rochebleve St., New Orleans
Johnnie Haggard Compton III, 180 Annex St., Destrehan
Bradley A. and Tara A. Cooper, 44334 C.E. Stafford Road, Franklinton
Harold William and Linda Livingston Copeland, 183 W. Pinewood Drive, Slidell
Charles Darin and Maria Torres Cowillion, 122 Cherry Creek Drive, Mandeville
James D. Cotner, 58562 Highway 1054, Amite
Keith Edward Danos, 1616 Orchid Drive, Harvey
Amanda Voss Davenport, 63 Shady Oaks, Covington
William Dale Deatherage, Post Office Box 150, Springfield
Terri Shandel Delille; 4300 Sutton Place Apt. 8-H, New Orleans
Sharon A. Barnitzer Dietz, 601 Vintage Drive Number E-234, Kenner
Lionel L. and Peggy Dillon, 1019 W. 30th Ave., Covington
Antoinette Dillon, 1504 N. St. Anthony St., New Orleans
Louis E. Dinotsar, 2400 Magazine St. Apt. 9, New Orleans
Alongi Joseph Dominick, 3928 So I-10 Svc Rd. Apt # 301, Metairie
Arthur Leslie Duncan, 3920 Civic St., Metairie
William Norman Duncan, P. O. Box 2272, Mandeville
Andre Phillip and Catherine Arnett Gelpcs Ewric, 103 Asphodel Place, Mandeville
Estopinal Industries Incorporated, 3944 Chef Menteur Highway, New Orleans
Carol Ann Evans, 1509 Ames Blvd., Marrero
Adam J. and Dawn T. Fabre, 550 Folse Drive, River Ridge
James Wendell Ferguson, 308 Rivermidge Drive Apartment C, Boutte
Tonja R. Fick, 909 South Cortez St., New Orleans
Tracy Jude and Wendy Jean Formaca, 21329 East Bel Rd., Amite
Christopher Bare Forst, 63 Shady Oaks, Covington
Gisele Catherine and Wilma James Frevin, 6161 Highway 39, Braithwaite
Brenda M. Fetkerson, 804 Mar Drive, Lockport
Olga Gabriel, 3901 N. I-10 Service Rd.#pt. C223, Metairie
Leonie Gabriel, 2616 Britannica Drive, Marrero
Kathleen Paul and Leonarde Barbaro Gallardo, 2230 8th Ave., Mandeville

Robert Garlepied, 6175 North Olympia, New Orleans
Marie T. and William F. Gillee, P. O. Box 470, Abita Springs
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CHAPTER 13

Under Chapter 13, a debtor sets up a payment schedule and plans a way to repay as many debts as possible in five years.

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See **FILINGS,** *F-9*

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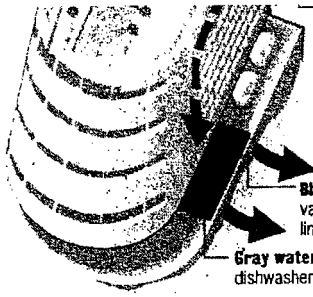

contaminants, then released through the ship's main smokestack.

Ash: Newer ships have packaging systems so ash may be safely landed ashore. Older ships still discharge ash at sea.

Bilge water: Up to about 2,600 gallons of oil and water drains from engines and machinery each day. This bilge water is separated, and the oily byproduct is incinerated or disposed of on shore.

■ DISCHARGED AT SEA

Black water: Up to about 14,000 gallons of sewage per day is flushed by vacuum toilets and treated with chlorine and ultraviolet light. Most cruise lines only discharge treated sewage at least 12 miles from the coastline.

Gray water: Up to about 150,000 gallons of waste water per day drains from dishwashers, sinks and showers. Considered biodegradable, it's flushed out at sea.

AP GRAPHIC

Bankruptcies

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FRENCHMAN'S WHARF APARTMENTS/REVISED PLAN FOR ACQUISITION INCLUDING:
1) DISPLACEMENT OF TENANTS
2) CONCENTRATION OF LOW INCOME RESIDENTS
3) CAPITAL IMPROVEMENTS
4) MANAGEMENT/OPERATIONS
5) RESIDENT PARTICIPATION
6) OVERSIGHT AND ACCOUNTABILITY

ALL RESIDENTS OF FRENCHMAN'S WHARF APARTMENTS, NEIGHBORHOOD RESIDENTS, LOCAL BUSINESSES, COMMUNITY LEADERS, AND ELECTED OFFICIALS ARE ENCOURAGED TO ATTEND THIS MEETING. PLEASE CONTACT THE CITY COUNCIL DISTRICT "E" OFFICE AT 565-6305 FOR ADDITIONAL INFORMATION. PERSONS IN NEED OF CERTAIN ACCOMMODATIONS SUCH AS A SIGN LANGUAGE INTERPRETER MAY BE PROVIDED SERVICES WITH 24 HOURS PRIOR NOTICE BY CALLING 565-6305/VOICE OR 565-8258/TTY

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DEF01511
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An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review

Jonathan Remy Nash[*]

Rafael I. Pardo[**]

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INTRODUCTION

What is the ideal structure for appellate review? Without providing a definitive answer to the question, commentators have suggested several factors that may improve the process, and thus perhaps the accuracy, of appellate review. First, it is said that panels of judges are preferable to review by a single judge. Second, expertise in the relevant area of law is a benefit. Third, other indicia of lawfinding ability—such as the ability of lawyers and judges to focus on legal issues without the distraction of factual conflicts and the amenability of judges' schedules to careful contemplation and reflection—contribute to the quality of appellate review. Fourth, a court's adherence to traditional notions of appellate hierarchy, as exemplified by following its earlier precedents, has been deemed to produce better results. Finally, it is said that the independence of appellate judges—that is, the extent to which job features such as life tenure and a guaranteed salary tend to insulate judges from pressures to decide cases or issues one way or another—is of value.

In this Article, we endeavor to evaluate empirically the relative quality of appellate review. To do this, we rely upon data obtained from the appellate review of bankruptcy matters. The current federal bankruptcy appellate structure provides an excellent setting in which to study appellate review because it offers litigants two paths for obtaining appellate review. First, after the bankruptcy judge issues a ruling, litigants may have the district court—in the person of a single district judge—review that ruling. Alternatively, the parties may agree (in circuits that have them) to have the bankruptcy judge's

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ruling reviewed by a panel of bankruptcy judges—a so-called "bankruptcy appellate panel" or "BAP." Further appeal in both cases—whether from the district court or the bankruptcy appellate panel—lies with the proper federal circuit court of appeals.

We have collected data on affirmance rates in and citation rates to appellate bankruptcy opinions. Analyses of the data generally—and analyses of the citation data in particular—support the notion that BAP decisions in our study are perceived to be of greater quality than are district court decisions. First, we find support for the proposition that courts of appeals are more likely to uphold upon review the conclusions of BAPs than district courts. Second, BAP decisions are, with statistical significance, cited more frequently by bankruptcy courts, BAPs, federal courts of appeals, and courts in other circuits than are district court decisions. Only district courts are not more likely to cite BAP decisions than decisions rendered by district courts.

Our findings will be of interest both to theoreticians and policymakers. If courts try to reach "correct" decisions, then our findings generally buttress the various theories about how to structure appellate tribunals so as to maximize the quality of appellate review. This, in turn, should guide policymakers in designing appellate tribunals and appellate structures in general. In particular, multimember tribunals that adhere to traditional notions of appellate hierarchy and that have subject-matter expertise in the area of the appeal appear to be desirable. And, even if judges do not strive to resolve issues and cases "correctly," our findings still seem to support the notion that judges perceive that appellate tribunals that have certain attributes will reach correct conclusions. In this sense, our findings show the persuasive strength of the theoreticians' story, or at least judges' perceptions of the strength of that story.

The Article proceeds in the following manner. Part I provides an overview of the theoretical literature discussing the quality of appellate review. Part II discusses the means by which we undertook to evaluate the quality of appellate review: Part II.A presents the legal setting of appeals of core bankruptcy proceedings, and Part II.B sets out the hypotheses we sought to test. Part III explains how we tested the hypotheses. Part III.A details the data we compiled and the essential features of those data. The next two subparts present the findings of our statistical analyses, with Part III.B explicating the bivariate descriptive statistics and Part III.C presenting the results of regression tests we conducted. Part III.D interprets these results and considers the implications of our findings.

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I. EVALUATING THE QUALITY OF APPELLATE REVIEW

Assembling an exhaustive list of the ideal elements of appellate review would present no small task. However, the academic literature does suggest several attributes that will tend to contribute to better appellate review.

First, commentators laud the use of panels of judges, rather than single judges, to hear appeals. There are two justifications for this. First, to the extent that there is an objectively "correct" answer to a question of law posed on appeal, and to the extent that there is a greater than 50% chance that each appellate judge will reach that "correct" answer, the Condorcet Jury Theorem instructs that a panel of judges will more likely reach the "correct" answer than will a single appellate judge.[1] Second, even to the extent that one might question the validity of the assumptions underlying the applicability of the Condorcet Jury Theorem in the context of appellate review,[2] there is an argument that the collegial nature of multimember appellate panels contributes to reflective decisionmaking and thus to the quality of appellate review.[3]

A second factor that strengthens the quality of appellate review is expertise of the appellate decisionmaking body in the subject matter of the appeals it hears.[4] Thus, for example, Congress created the United States Court of Appeals for the Federal Circuit with an eye to

1. *See* Jonathan Remy Nash, *Resuscitating Deference to Lower Federal Court Judges' Interpretations of State Law*, 77 S. CAL. L. REV. 975, 1022–23 (2004) (describing the Condorcet Jury Theorem).

2. *See* Jonathan Remy Nash, *A Context-Sensitive Voting Protocol Paradigm for Multimember Courts*, 56 STAN. L. REV. 75, 112–13 & 112 nn.130–31 (2003) (questioning the applicability of the Condorcet Jury Theorem in the context of appellate judicial decisionmaking).

3. *See, e.g.*, Harry T. Edwards, *The Effects of Collegiality on Judicial Decisionmaking*, 151 U. PA. L. REV. 1639, 1649 (2003) (arguing that collegiality contributes to sound decisionmaking that focuses on the legal issues at hand); Lewis A. Kornhauser & Lawrence G. Sager, *Unpacking the Court*, 96 YALE L.J. 82, 100–02 (1986). *But see* Richard L. Revesz, *Environmental Regulation, Ideology, and the D.C. Circuit*, 83 VA. L. REV. 1717, 1719 (1997) (finding empirical evidence that judges on an appellate panel of the same political party are more likely to vote ideologically); Cass R. Sunstein, David Schkade & Lisa Michelle Ellman, *Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation*, 90 VA. L. REV. 301, 316–25 (2004) (finding some evidence of ideological voting on federal courts of appeals).

4. *See* Erwin Chemerinsky, *Decision-Makers: In Defense of Courts*, 71 AM. BANKR. L.J. 109, 115 (1997) ("Specialization offers two major advantages: expertise and uniformity."). For an argument that it might benefit the legal system to have some judges with expertise in areas other than law, see Adrian Vermeule, *Should We Have Lay Justices?*, 59 STAN. L. REV. 1569, 1587–98 (2007).

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creating an appellate body with the expertise to deal effectively with the complex area of patent law.[5]

Third, courts and commentators identify general "lawfinding ability"—as distinct from expertise in particular areas of law—as a virtue for appellate review.[6] While the Supreme Court has characterized the presence of multijudge panels as "[p]erhaps most important" in assessing lawfinding ability,[7] it has also indicated other factors that tend to enhance lawfinding ability in the appellate setting. Specifically, lawfinding ability is greater when (i) the judges have schedules that allow time for reflection,[8] (ii) the judges resolve legal issues once the factual record is fully developed,[9] and (iii) the attorneys may focus on the relevant legal issues without the distraction of trial advocacy.[10]

A fourth factor that tends to be associated with the quality of appellate review is the extent to which an appellate court conforms to traditional appellate hierarchy.[11] Courts in the United States are organized according to a standard hierarchy: trial courts decide cases in the first instance, with a first appeal as of right to an intermediate appellate court and a second appeal to a high court at the discretion of

5. *See, e.g.*, Rochelle Cooper Dreyfuss, *The Federal Circuit: A Case Study in Specialized Courts*, 64 N.Y.U. L. REV. 1, 7 (1989) (citing predictability and efficiency as reasons for creating a specialized patent court to relieve the burden of technical patent cases on generalist judges); R. Polk Wagner & Lee Petherbridge, *Is the Federal Circuit Succeeding? An Empirical Assessment of Judicial Performance*, 152 U. PA. L. REV. 1105, 1114–17 (2004) (giving an account of the establishment of the Federal Circuit's exclusive appellate jurisdiction over patent law).

6. *See* Nash, *supra* note 1, at 1022.

7. Salve Regina Coll. v. Russell, 499 U.S. 225, 232 (1991).

8. *Id.* at 231 (noting, with a negative connotation from the perspective of lawfinding ability, that district judges "preside alone over fast-paced trials").

9. *Id.* at 232.

10. *Id.* at 231–32.

11. *See, e.g.*, Robert B. Ahdieh, *Between Dialogue and Decree: International Review of National Courts*, 79 N.Y.U. L. REV. 2029, 2047 (2004) (suggesting that appellate review and appellate hierarchy are integrally related by noting that "the various characteristics and functions of appellate review . . . suggest that some gradation of judicial authority is central to the nature of appellate review," and that "[a]n appellate system of review . . . is one defined by hierarchy"); John A. Ferejohn & Larry D. Kramer, *Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint*, 77 N.Y.U. L. REV. 962, 998 (2002) ("[T]he development of an appellate hierarchy with collegial courts at the higher levels and stringent rules of vertical stare decisis operates structurally to ensure that no individual judge can, by his or her actions alone, inflict too much damage on the judiciary by making aberrant or overly ambitious decisions."); Mortimer N. S. Sellers, *The Doctrine of Precedent in the United States of America*, 54 AM. J. COMP. L. 67, 68 (2006) ("The essence of the American system of precedent as experienced in practice resides in the great authority and hierarchical arrangement of the courts."). *But cf.* Pauline T. Kim, *Lower Court Discretion*, 82 N.Y.U. L. REV. 383, 387–88 (2007) (arguing that the common principal-agent model for analyzing lower court efforts to fulfill appellate court mandates ignores the allocation of discretion to lower courts).

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that high court.[12] Within that hierarchy are rules of precedent that, while not absolute, create barriers against courts overruling earlier cases. As a general matter, under so-called horizontal stare decisis, high courts and intermediate appellate courts will follow their own earlier precedents.[13] Further, vertical stare decisis binds inferior courts generally to the precedents issued by superior courts within the hierarchy.[14]

It is true that court systems need not have the features of appellate hierarchy and stare decisis to function, nor indeed to function well.[15] Commentators debate whether Congress can statutorily alter or abrogate the traditional rules of stare decisis, as

12. *See, e.g.*, Lewis A. Kornhauser, *Adjudication by a Resource-Constrained Team: Hierarchy and Precedent in a Judicial System*, 68 S. CAL. L. REV. 1605, 1607–08 (1995) (elucidating the traditional appellate hierarchy).

13. Absent en banc review, courts of appeals are bound by prior decisions issued by the court (independent of panel composition). *E.g.*, United States v. Myers, 200 F.3d 715, 720 (10th Cir. 2000).

In general, horizontal stare decisis does not extend beyond the court that issued an opinion to sibling courts of the same hierarchical level. While intermediate appellate courts will follow decisions issued by earlier panels of the same court—notwithstanding that the composition of the judges on the panels may vary—intermediate appellate courts generally are under no precedential obligation to follow decisions issued by sibling intermediate appellate courts of similar hierarchical rank. Thus, for example, a Ninth Circuit panel may find First Circuit precedent to be persuasive and choose to follow it, but stare decisis does not demand that the Ninth Circuit so act; rather, stare decisis leaves the Ninth Circuit free to disagree with and to disregard the First Circuit precedent. *See, e.g.*, Evan H. Caminker, *Why Must Inferior Courts Obey Superior Court Precedents?*, 46 STAN. L. REV. 817, 824–25 (1994). Also, the rule of horizontal precedent does not extend to trial courts, as discussed below. *See* Amy Coney Barrett, *Stare Decisis and Due Process*, 74 U. COLO. L. REV. 1011, 1015 (2003); Caminker, *supra*, at 825 ("[A] district court judge may ignore the decisions of 'foreign' courts of appeals as well as other district court judges, even within the same district." (footnote omitted)); Kornhauser, *supra* note 12, at 1609. *But see* Daniel J. Bussel, *Power, Authority, and Precedent in Interpreting the Bankruptcy Code*, 41 UCLA L. REV. 1063, 1095 (1994) (noting a "long tradition" of district judges deviating from prior precedent in the same district only in extraordinary circumstances); *infra* note 71 and accompanying text.

14. *See, e.g.*, Chemerinsky, *supra* note 4, at 111 ("[C]ourts generally issue written decisions that, when published, have precedential effect on future rulings involving different parties."); Susan B. Haire, Stefanie Lindquist & Donald R. Songer, *Appellate Court Supervision in the Federal Judiciary: A Hierarchical Perspective*, 37 LAW & SOC'Y REV. 143, 145 (2003) ("Appellate oversight in the lower tiers of the federal judicial hierarchy . . . provides a process through which circuit judges are expected to promote legal rules that will guide decision making in subsequent cases."); Kornhauser, *supra* note 12, at 1609.

15. For example, civil law systems do not rely upon as stringent a hierarchy, or upon rules of precedent as stringent. *See, e.g.*, Caminker, *supra* note 13, at 826; Kornhauser, *supra* note 12, at 1608; Thomas Lundmark, *Interpreting Precedents: A Comparative Study*, 46 AM. J. COMP. L. 211, 214 (1998) (reviewing INTERPRETIVE PRECEDENTS: A COMPARATIVE STUDY (D. Neil MacCormick & Robert S. Summers eds., 1997)) ("One of the classic differences between civil-law and common-law jurisdictions is that the former . . . do not recognize judicial precedent as an independent source of law." (footnote omitted)). For an exposition, and critique, of the necessity and desirability of stare decisis, see Caminker, *supra* note 13, at 865–67.

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well as the normative question of whether it should.[16] Nonetheless, whether it is constitutionally mandated or normatively desirable, the assumption underlying the dominant U.S. judicial structure is that horizontal and vertical stare decisis provide precedential power to decisions by appellate courts. Assuming that judges seek to arrive at correct outcomes,[17] these standard rules of precedent presumably increase the quality of appellate review. It stands to reason that a court that knows that its opinions will bind itself, and possibly bind lower courts, will consider more carefully its reasoning before issuing judgments and opinions that announce new rules of law.[18] Relatedly, a focus on cases that raise novel legal questions should allow appellate courts to conserve judicial resources, apply those resources in cases in which they are truly needed, and thus to reach correct answers more frequently.[19]

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16. *Compare, e.g.*, Caminker, *supra* note 13, at 828–34 (arguing that the constitutional case for the binding nature of Supreme Court precedent on lower federal courts is "quite powerful"), *and* Richard H. Fallon, Jr., *Stare Decisis and the Constitution: An Essay on Constitutional Methodology*, 76 N.Y.U. L. REV. 570, 577–85 (2001) (arguing in favor of the constitutional status of stare decisis), *with* John Harrison, *The Power of Congress over the Rules of Precedent*, 50 DUKE L.J. 503, 513 (2000) (arguing to the contrary), Thomas Healy, *Stare Decisis as a Constitutional Requirement*, 104 W. VA. L. REV. 43, 92 (2001) (same), Gary Lawson, *Controlling Precedent: Congressional Regulation of Judicial Decision-Making*, 18 CONST. COMMENT. 191, 204–07 (2001) (same), *and* Michael Stokes Paulsen, *Abrogating Stare Decisis by Statute: May Congress Remove the Precedential Effect of* Roe *and* Casey*?*, 109 YALE L.J. 1535, 1546–47 (2000) (same).

17. *See* Kornhauser, *supra* note 12, at 1606 (taking as a baseline assumption in developing economic theory of stare decisis that "the 'judicial team' seeks to answer the expected number of 'correct' answers subject to its resource constraint"); *cf.* Owen M. Fiss, *Objectivity and Interpretation*, 34 STAN. L. REV. 739, 746–47 (1982) (discussing how judges belong to an "interpretive community" that subscribes to the rule of law).

Even if goals other than arriving at the correct outcome motivate judges, *see, e.g.*, Erin O'Hara, *Social Constraint or Implicit Collusion? Toward a Game Theoretic Analysis of Stare Decisis*, 24 SETON HALL L. REV. 736, 738–42 (1993) (arguing that judges' self-interest—including judges' interest in expanding their influence—explains the development of horizontal stare decisis); *infra* notes 100–102 and accompanying text, the fact remains that, to the extent that the U.S. judicial system substantially relies on the traditional hierarchical form and rules, the extent to which a court comports with that norm will increase the *perception* that it is reaching correct decisions.

18. *See* Kornhauser, *supra* note 12, at 1623 ("In a completely decentralized system each judge would have to attend to the caseload of every other judge in order to identify appropriate cases for review; in a hierarchical system, only the appellate judges need have a systemic perspective on caseload."); *cf. id.* at 1620 (noting that, absent horizontal precedent, "each judge is more likely to give *each case* intensive consideration" (emphasis added)); *id.* at 1624 (arguing in favor of "strict vertical precedent because the hierarcbical structure creates a division of labor between levels of the hierarchy"); *id.* at 1625–27 (arguing in favor of horizontal precedent at the appellate, but not the trial, level).

19. *See* Kornhauser, *supra* note 12, at 1622–24; Caminker, *supra* note 13, at 839–43. Of course, a cost in such a system is that the first court may resolve the legal question incorrectly, and then bind future courts to that rule. *See* O'Hara, *supra* note 17, at 736 n.3 (identifying the "primary social cost of *stare decisis*" as "the entrenchment of bad decisions"); *see also* Lewis A.

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A fifth factor that many commentators identify as an ingredient of judicial quality is judicial independence.[20] It is said that judges who enjoy greater independence are less likely to be swayed by irrelevant, nonjudicial concerns. The American Founding Fathers subscribed to this view,[21] and accordingly vested Article III judges with presumptive life tenure and the guarantee of nonreduction in salary.[22]

II. INVESTIGATING APPELLATE STRUCTURE AND THE PERCEIVED QUALITY OF APPELLATE REVIEW

At its essence, an appeal involves a claim that a trial court committed some form of error—for example, failure to follow proper procedure or improper application of the law. Accordingly, we might say that one of the primary functions of an appellate court, if not the principal function, is to ascertain whether the alleged error truly occurred. As we have already discussed, theorists have posited various attributes that improve the quality of appellate review. While plausible that some of these factors may contribute more than others to improving the quality of appellate review, it seems reasonable to conclude that, on balance, as between two different appellate tribunals, the one that has more of the theorized features of quality appellate review will perform the appellate function better.

Kornhauser, *An Economic Perspective on Stare Decisis*, 65 CHI.-KENT L. REV. 63, 67–73 (1989) (discussing reliance by a court on earlier decisions by that court, even if wrongly decided, as an optimization problem and as varying depending upon institutional structure).

There are other social benefits that rules of stare decisis provide—certainty, predictability, fairness, and consistency. *See* Caminker, *supra* note 13, at 843–56 (discussing the desire to avoid "delayed justice," the greater decisionmaking proficiency of superior courts, and uniform interpretation and application of law as consequentialist justifications for stare decisis); Kornhauser, *supra* note 12, at 74–78 (discussing fairness, competence, and certainty as justifications for stare decisis). These benefits, however, are not the result of the courts necessarily reaching correct conclusions. Indeed, these benefits would inhere if courts uniformly reached bad decisions. *See* Kornhauser & Sager, *supra* note 3, at 105 (contrasting consistency, soundness, and coherence).

20. *See, e.g.*, Daniel Berkowitz & Karen Clay, *The Effect of Judicial Independence on Courts: Evidence from the American States*, 35 J. LEG. STUD. 399, 422–24 (2006) (finding a strong correlation between judicial independence and court quality); Jonathan Remy Nash, *Prejudging Judges*, 106 COLUM. L. REV. 2168, 2171 (2006) (characterizing judicial independence and judicial accountability as "competing demands upon the judiciary"). *But see* Daniel M. Klerman, *Legal Infrastructure, Judicial Independence, and Economic Development* 1 (Univ. S. Cal. Law Sch. Legal Studies Research Paper Series, Paper No. C06-1, 2006), *available at* http://ssrn.com/abstract=877490 ("There is some evidence that judicial independence is associated with economic growth, but the evidence is mixed and causation is unclear.").

21. *See* THE FEDERALIST NOS. 78, 79, 81 (Alexander Hamilton); *id.* NOS. 47, 48, 51 (James Madison).

22. U.S. CONST. art. III, § 1.

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The two-tiered system of bankruptcy appeals is an excellent field for an empirical investigation of how alternative appellate structures may affect the quality of appellate review. The current appellate structure provides for appeals of bankruptcy court decisions in "core" bankruptcy proceedings to be heard by one of two appellate tribunals: federal district courts or federal bankruptcy appellate panels (commonly referred to as "BAPs"). Based on the criteria we identified above in Part I, we conclude that the BAP is the stronger of the two appellate courts—that is, better equipped to carry out the principal function of identifying alleged error. We investigate this hypothesis through the study of appeals in core bankruptcy proceedings. We seek to unearth evidence that will inform scholarly inquiry into the hallmarks of quality appellate review and that will illuminate areas warranting further exploration.

This Part sets the backdrop for our empirical study. First, we describe the bankruptcy judicial structure, with primary emphasis on the manner in which appeals progress through it. We then discuss our approach for empirically investigating the theoretical proposition that BAPs are the stronger of the two appellate courts in performing appellate function at the first tier of review. We finally develop a series of hypotheses to test the theory.

A. The Bankruptcy Appellate Process

Unlike any other part of the federal judicial system, the bankruptcy appeals process routinely involves two levels of intermediate review. This anomalous state of affairs can be traced to congressional reform efforts during the 1970s that sought to improve the quality of the bankruptcy court while simultaneously maintaining it in a subordinate relationship to the district court.[23]

Under the predecessor to the current Bankruptcy Code, the Bankruptcy Act of 1898,[24] district courts delegated much of their responsibility over bankruptcy cases to "bankruptcy referees," individuals appointed by a panel of district judges for a six-year term.[25] The limited role and status of the referees at the inception of the Bankruptcy Act expanded over time, which in turn increased the cadre of full-time judicial officers involved in the administration of

23. *See* Eric A. Posner, *The Political Economy of the Bankruptcy Reform Act of 1978*, 96 MICH. L. REV. 47, 123 (1997) (noting that the "double appeal system was a concession to the federal judges, a symbol of the subordination of the bankruptcy court to the district court").

24. *See* Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1978).

25. Posner, *supra* note 23, at 61–62.

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bankruptcy cases.[26] Eventually, the Supreme Court promulgated rules of bankruptcy procedure in 1973 that redesignated referees as "bankruptcy judges."[27] This change, however, did not remove the distinction between bankruptcy judges and Article III judges, including, for example, "prohibitions against bankruptcy judges using the elevators, parking lots, and dining rooms reserved for Article III judges."[28] Moreover, some Article III judges continued to refer to bankruptcy judges as "referees" in spite of the titular change.[29] Sentiments such as these infused their way into the policymaking debates over bankruptcy reform in the 1970s.

In 1970, Congress established the Commission on the Bankruptcy Laws of the United States to analyze the Bankruptcy Act and to suggest recommendations for its reform.[30] While the original resolution creating the Commission proposed that the Chief Justice would appoint two bankruptcy referees as commissioners, strident opposition—led by, among others, District Judge Edward Weinfeld, chair of the Judicial Conference's Committee on the Administration of the Bankruptcy System—resulted in passage of the resolution without constraints on whom the Chief Justice could appoint.[31] The Chief Justice did not appoint any bankruptcy referees to the Commission, instead appointing Judge Weinfeld and District Judge Hubert Will.[32] Judge Weinfeld's efforts resulted in the exclusion of bankruptcy referees from policymaking discussions on bankruptcy reform within the organizational framework of both the Commission and the Judicial Conference.[33] That the federal judiciary went to great lengths to oppose the inclusion of bankruptcy referees in the reform process highly suggests that Article III judges feared loss of power and prestige in the event Congress increased the power of bankruptcy

26. *See* Geraldine Mund, *Appointed or Anointed: Judges, Congress and the Passage of the Bankruptcy Act of 1978: Part One: Outside Looking In*, 81 AM. BANKR. L.J. 1, 3–6 (2007).

27. BANKR. R. 901(7) (1973) (repealed 1978).

28. Vern Countryman, *Scrambling to Define Bankruptcy Jurisdiction: The Chief Justice, the Judicial Conference, and the Legislative Process*, 22 HARV. J. ON LEGIS. 1, 2 (1985). Hearsay evidence suggests that at least one Article III judge viewed bankruptcy judges as occupying the professional status equivalent to a janitor. *See* Mund, *supra* note 26, at 12 n.34.

29. Posner, *supra* note 23, at 61 & n.25; *cf.* Mund, *supra* note 26, at 12 n.34 ("As late as 1978, even though Judge James Browning, then chief judge of the Ninth Circuit, specifically invited five bankruptcy judges to attend the circuit conference, Senior District Judge Lloyd George (formerly a bankruptcy judge) reports that 'they wouldn't call me "judge." They called me mister.' " (quoting Interview with Lloyd George (Dec. 20, 2004))).

30. Pub. L. No. 91-354, 84 Stat. 468 (1970).

31. Mund, *supra* note 26, at 7.

32. *Id.* at 8.

33. *Id.*

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referees.[34] It is this dynamic that underlies the current bankruptcy judicial structure and the anomaly of double appeals. Only one level of intermediate appellate review would have been needed had Congress made today's bankruptcy judges coequals with district court judges, but that was not to be the case.

With enactment of the Bankruptcy Code in 1978,[35] Congress effectuated a complete overhaul of the federal bankruptcy system that had been in place for eighty years. While there were proposals to vest bankruptcy judges with Article III status,[36] Congress ultimately rejected that notion, a decision supported by most current and former Article III judges.[37] Congress instead decided to establish the bankruptcy courts as "adjuncts" of the federal district courts. Bankruptcy jurisdiction was vested statutorily in the district courts, yet the statute also directed that all of that jurisdiction was to be exercised by the bankruptcy courts, which were to be staffed by non-Article III judges.[38]

The Supreme Court rejected the 1978 Act's jurisdictional structure in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*[39] The Court in *Marathon* held that the 1978 Act violated Article III by vesting federal judicial power in non-Article III bankruptcy judges. The decision forced Congress to repair the constitutional infirmity. Lobbying by Article III judges led Congress yet again to reject a solution of affording bankruptcy judges Article III status.[40] Instead, Congress simply modified the 1978 structure. The Bankruptcy Amendments and Federal Judgeship Act of 1984

34. *See* Posner, *supra* note 23, at 75.

35. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended primarily at 11 U.S.C. §§ 101–1532 and in scattered sections of 28 U.S.C.).

36. *See* Countryman, *supra* note 28, at 7–8.

37. *See id.* at 8–9; Posner, *supra* note 23, at 77 ("The federal judges opposed the creation of more independent bankruptcy courts, because (1) they would lose their appointment power over bankruptcy judges, and thus one of their main patronage opportunities, and (2) their status would be diluted through the vast increase in the number of federal judicial positions.").

Interestingly, as Congress considered various proposals for reorganizing the court structure of the bankruptcy system in its reform efforts from the 1970s that led to enactment of the Bankruptcy Code, bankruptcy judges did not seek Article III status. Instead, they lobbied Congress for appointment by the judicial council, rather than the president, for two reasons: First, they believed their merit would be properly recognized in a nonpolitical judicial appointment process; and, second, they feared that sitting judges would lack the political connections necessary for presidential appointment. *See* Mund, *supra* note 26, at 20–21, 24–25, 29. For a political economic analysis of the 1978 Act's treatment of bankruptcy judges, see Posner, *supra* note 23, at 74–94.

38. *See* 28 U.S.C. § 1471(b), (c) (Supp. II 1978), *invalidated by* N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

39. 458 U.S. at 87.

40. Countryman, *supra* note 28, at 31.

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statutorily established the bankruptcy judges, who are appointed by the courts of appeals,[41] as "unit[s]" of the district courts.[42] Thus, parties technically should file bankruptcy cases in federal district court. However, the Act authorizes each district court to "refer" "any or all cases" or "proceedings" to the bankruptcy judges.[43] District courts in turn have implemented "standing orders" to refer bankruptcy cases in the first instance to the bankruptcy courts.[44]

In determining the scope of the bankruptcy judge's authority to resolve a dispute within a bankruptcy case,[45] it is necessary to categorize the proceeding as core or non-core. Absent the consent of all parties, bankruptcy judges may only issue recommendations for the resolution of non-core proceedings, with de novo district court review upon objection by either party.[46] Appellate review thereafter lies to the appropriate federal court of appeals,[47] and thence to the Supreme Court,[48] in line with the typical federal appellate hierarchy.

Core proceedings, on the other hand, are those that lie at the heart of a bankruptcy case.[49] Bankruptcy judges are empowered to

41. 28 U.S.C. § 152(a)(1) (Supp. V 2005).

42. *Id.* § 151 (2000); *see also id.* § 152(a)(1) (Supp. V 2005) ("Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.").

43. *Id.* § 157(a) (2000).

44. 9 AM. JUR. 2D *Bankruptcy* § 731 (2008); Bussel, *supra* note 13, at 1066 & n.12.

45. Disputes in bankruptcy cases generally assume one of two forms: (1) an adversary proceeding, or (2) a contested matter. Adversary proceedings include, for example, a proceeding to recover money or property; a proceeding to determine the validity, priority, or extent of a lien; a proceeding to object to or revoke a discharge; and a proceeding to determine the dischargeability of a debt. FED. R. BANKR. P. 7001. Such proceedings are initiated and advance much as any other federal lawsuit, insofar as Part VII of the Federal Rules of Bankruptcy Procedure, which governs such proceedings, virtually incorporates the Federal Rules of Civil Procedure (occasionally with modification). *See, e.g.*, *id.* 7003 (FED. R. CIV. P. 3); *id.* 7004(a) (portions of FED. R. CIV. P. 4); *id.* 7005 (FED. R. CIV. P. 5); *id.* 7012(b) (FED. R. CIV. P. 12(b)–(h)); *id.* 7013 (FED. R. CIV. P. 13); *id.* 7014 (FED. R. CIV. P. 14); *id.* 7056 (FED. R. CIV. P. 56). Disputes between parties that are not adversary proceedings are called "contested matters," and they proceed according to less complex procedures than adversary proceedings—including request for relief by motion rather than the filing of a complaint. FED. R. BANKR. P. 9014; *see also* Khachikyan v. Hahn (*In re* Khachikyan), 335 B.R. 121, 125 (B.A.P. 9th Cir. 2005) ("In a contested matter, there is no summons and complaint, pleading rules are relaxed, counterclaims and third-party practice do not apply, and much pre-trial procedure is either foreshortened or dispensed with in the interest of time . . . .").

46. The Judicial Code describes a non-core proceeding as "a proceeding that is not a core proceeding but is otherwise related to a case under title 11." 28 U.S.C. § 157(c)(1) (2000 & Supp. V 2005).

47. 28 U.S.C. §§ 1291, 1292 (2000).

48. *Id.* § 1254(1).

49. Section 157(b)(1) of the Judicial Code speaks of "core proceedings arising under title 11, or arising in a case under title 11." *Id.* § 157(b)(1). In turn, section 157(b)(2) lists examples of core proceedings, which include matters concerning (1) administration of the estate, (2) the allowance

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resolve these cases definitively, in the first instance, with appellate review to follow.[50] Here, however, there may be more than one possible appellate path.

The statute authorizes the judicial council of each circuit to establish a "bankruptcy appellate panel"—commonly known as a "BAP"—comprised of bankruptcy judges from that circuit.[51] BAPs are now constituted—and have been constituted since 1996—in the First, Sixth, Eighth, Ninth, and Tenth Circuits.[52] For a BAP to be empowered to hear appeals from bankruptcy courts in a given district, a majority of district judges in the district must vote to authorize it.[53] In circuits that have created BAPs and in districts that have authorized the BAP to hear appeals, the default rule is that, unless a party elects otherwise, appeals of bankruptcy judges' rulings in core proceedings will lie to the BAP.[54] Appeals from BAP rulings lie to the

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of claims, (3) objections to discharge, and (4) plan confirmation. *Id.* § 157(b)(2) (2000 & Supp. V 2005).

50. *Id.* § 157(b)(1) (2000). Unless, that is, the district court withdraws the reference to the bankruptcy court. *Id.* § 157(d). In that case, the district court hears the matter in the first instance, with appeals in the ordinary course lying to the court of appeals and then the Supreme Court. *See supra* notes 47–48.

51. 28 U.S.C. § 158(b)(1). The statute also authorizes the creation of intercircuit BAPs, *id.* § 158(b)(4), but none has yet been created. Much as the bankruptcy court is a unit of the district court, the bankruptcy appellate panel may be seen as "a unit of the federal courts of appeals." Admin. Office of the U.S. Courts, The Federal Judiciary—United States Courts of Appeals, *Bankruptcy Appellate Panels*, http://www.uscourts.gov/courtsofappeals/bap.html (last visited Oct. 11, 2008); *see also* 28 U.S.C. § 158(b)(1) (requiring BAPs to be established and BAP judges to be appointed by the circuit judicial council); B.A.P. 8TH CIR. R. 8016A(a)(1) ("The Clerk of the United States Court of Appeals for the Eighth Circuit shall serve as the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit."). *Compare* Coyne v. Westinghouse Credit Corp. (*In re* Globe Illumination Co.), 149 B.R. 614, 620–21 (Bankr. C.D. Cal. 1993) (describing BAP as unit of the circuit court), *with* Kathleen P. March & Rigoberto V. Obregon, *Are BAP Decisions Binding on Any Court?*, 18 CAL. BANKR. J. 189, 197 (1990) (describing BAP as unit of the district court).

52. The 1994 amendments to the Bankruptcy Code were designed to encourage circuit courts to create BAPs by directing that each circuit "shall establish" a BAP unless the circuit judicial council finds that existing judicial resources are insufficient to establish one or that its establishment would result in undue delay or increased cost to parties in cases under the Bankruptcy Code. 28 U.S.C. § 158(b)(1). The six regional circuits that voted against establishing BAPs "concluded that the appellate process was functioning well as already constituted and that BAPs would create undue delay or increase the cost of appeals." Henry J. Boroff, *The Precedential Effect of Bankruptcy Appellate Panel Decisions*, 103 COM. L.J. 212, 214 n.10 (1998) (citing Elizabeth Abbott, *Bankruptcy Review Panel Makes Debut*, NAT'L L.J., Mar. 3, 1997, at B1). For a historical discussion of BAPs, see Bryan T. Camp, *Bound by the BAP: The Stare Decisis Effects of BAP Decisions*, 34 SAN DIEGO L. REV. 1643, 1648–60 (1997); *infra* note 75.

53. 28 U.S.C. § 158(b)(6). In the mid-1990s, when a Second Circuit BAP was in existence, "only three districts participate[d]—and these together typically receive[d] less than a third of all bankruptcy petitions filed in the Second Circuit." Camp, *supra* note 52, at 1660. These facts, presumably, played a large role in the ultimate decision to disband the Second Circuit BAP.

54. 28 U.S.C. § 158(c)(1) (2000 & Supp. V 2005).

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circuit courts of appeals.[55] Parties may seek discretionary review by the Supreme Court of rulings by the courts of appeals.[56]

If either the appellant or the appellee so elects—or if the circuit has not created a BAP or, even if it has, if the district court in question has not voted to authorize BAP appeals—then the district court (in the person of a single district judge) initially hears appeals of bankruptcy court rulings in core proceedings.[57] The judgment of the district court may then be appealed to the appropriate circuit court of appeals,[58] with discretionary Supreme Court review as the remaining appellate step.[59] In short, then, certain parties in some circuits have an option between two possible appellate paths.[60] We illustrate this in Figure 1.[61]

55. *Id.* § 158(d)(1) (Supp. V 2005).

56. *Id.* § 1254(1) (2000).

57. *Id.* § 158(c)(1) (2000 & Supp. V 2005).

58. *Id.* § 158(d)(1) (Supp. V 2005).

59. *Id.* § 1254(1) (2000).

60. *See generally* Bernard Trujillo, *Self-Organizing Legal Systems: Precedent and Variation in Bankruptcy*, 2004 UTAH L. REV. 483, 490–500 (elucidating the differences between the standard federal judicial hierarchy and the bankruptcy appellate system).

61. We should note that a third possible appellate path not yet discussed—that of direct appeal from the bankruptcy court to the court of appeals—exists for a limited set of circumstances. By virtue of amendment to the Judicial Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, appeal may proceed directly to the court of appeals pursuant to a certification procedure if one of the following circumstances exists: (1) the appeal involves a question of law unresolved by the court of appeals for the circuit or by the Supreme Court; (2) the appeal involves a matter of public importance; (3) the appeal involves a question of law requiring resolution of conflicting decisions; or (4) the appeal may materially advance the progress of the case or proceeding in which the appeal is taken. 28 U.S.C. § 158(d)(2)(A) (Supp. V 2005).

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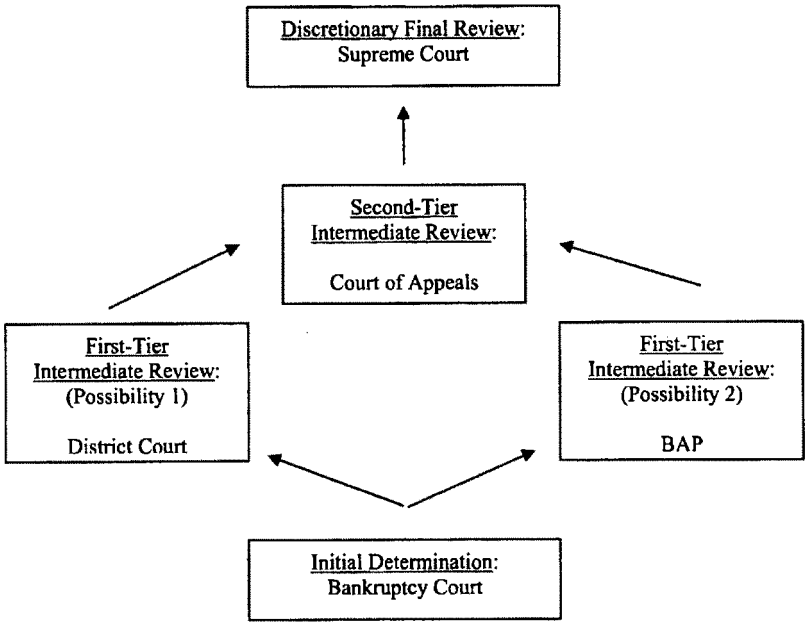
FIGURE 1
FEDERAL BANKRUPTCY APPELLATE STRUCTURE
FOR CORE PROCEEDINGS



A comparison of BAPs to district courts suggests that BAPs have more of the features of quality appellate review than do the district courts. First, bankruptcy appellate panels are collegial bodies that decide cases in three-judge panels. Indeed, bankruptcy judges who serve on BAPs themselves believe that reviewing cases in panels of judges benefits decisionmaking.[62] By contrast, bankruptcy appeals to district courts are heard by a single district judge.

Second, the bankruptcy judges who comprise bankruptcy appellate panels are (by virtue of their appointment as bankruptcy

62. Ralph R. Mabey, *The Evolving Bankruptcy Bench: How Are the "Units" Faring?*, 47 B.C. L. REV. 105, 123 (2005).

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judges) presumably experts in bankruptcy law.[63] Thus, they are well suited to resolve legal issues that might arise in core bankruptcy proceedings.[64] District judges, by contrast, are more often characterized as generalists in the law, without special training or experience in bankruptcy law.[65]

The third factor—"other" lawfinding ability[66]—appears to favor neither district judges nor bankruptcy appellate panels. Attorneys filing appellate briefs may focus on the legal issues without the distractions of trial advocacy, whether the briefs are filed with the district court or appellate panel. Similarly, both district judges and bankruptcy appellate panels hear legal issues once a factual record has been established. Last, while district judges and bankruptcy judges both preside over trials, neither the district judge hearing a bankruptcy appeal, nor bankruptcy judges sitting on a bankruptcy appellate panel, are presiding over a trial as part of the appellate process.[67]

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63. *See, e.g., id.* at 107 ("Most of the bankruptcy judges were bankruptcy practitioners in their prior careers."); *see also id.* at 123 (noting that, of a random survey of bankruptcy judges in 2005, "[a]bout 83% . . . were bankruptcy practitioners before taking the bankruptcy bench," and that, "[o]f the 17% . . . who were not bankruptcy practitioners, almost all came from a business law background, as commercial litigators or corporate transactional lawyers," and further noting that the surveyed bankruptcy judges felt that their prior experience was very helpful on the bench); *cf. id.* at 113–16 (discussing the trend among bankruptcy judges to hire more permanent, as opposed to term, law clerks, and noting that those bankruptcy judges who preferred permanent clerks often hired clerks with legal experience, and in particular practice experience in bankruptcy law).

64. *See* Chemerinsky, *supra* note 4, at 128 ("[T]he BAP is desirable because it allows specialist bankruptcy judges to replace nonspecialist federal district court judges."); *see also* Jeffrey J. Rachlinski, Chris Guthrie & Andrew J. Wistrich, *Inside the Bankruptcy Judge's Mind*, 86 B.U. L. REV. 1227, 1230–31 (2006) (reporting empirical finding that bankruptcy judges as specialized actors perform "at least as well" as generalist judges in terms of not exhibiting typical biases often reflected in judgments).

65. One might argue that even district judges with no experience in bankruptcy before ascending to the bench gain some experience by virtue of hearing a steady stream of bankruptcy cases. A study by the Federal Judicial Center of the bankruptcy appellate structure, however, reached the opposite conclusion, observing that "[t]he number of first-level reviewers greatly exceeds the number of bankruptcy judges producing the judgments reviewed, and appellate caseloads are spread thinly among district judges, giving few judges much opportunity to develop bankruptcy expertise." Judith A. McKenna & Elizabeth C. Wiggins, *Alternative Structures for Bankruptcy Appeals*, 76 AM. BANKR. L.J. 625, 627 (2002).

66. We employ the modifier "other" because, as noted above, the Court suggested that the use of multi-judge panels is "[p]erhaps most important" in assessing lawfinding ability. *Supra* note 7 and accompanying text.

67. It is this factor that, presumably, vests district judges with lawfinding ability when they sit by designation on court of appeals panels. *See* Nash, *supra* note 1, at 1031 (explaining that the better term is lawfinding "ability" and not lawfinding "expertise"). One might argue that lawfinding ability is enhanced to the extent that the judge (whether district or bankruptcy) enjoys relief from her other responsibilities while hearing appeals. This seems not to be the case, however, at least for bankruptcy judges:

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Fourth, bankruptcy appellate panels conform to traditional notions of appellate review: their rulings are generally seen to be binding on future bankruptcy appellate panels drawn from the same circuit.[68] Further, at least one BAP has held that its decisions are binding on all bankruptcy courts within that circuit,[69] even if the bankruptcy courts themselves do not share this view.[70] In contrast,

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> When asked how BAP service affects their service as a bankruptcy judge, several of the [surveyed bankruptcy judges] indicated that it required adjustments to their bankruptcy court trial and hearing schedule and that it substantially added to their workload. Some of the Survey Participants suggested that those bankruptcy judges who serve full-time on the BAP should have the option of employing an additional law clerk. One Survey Participant indicated that service on the BAP was "like having a second job."

Mabey, *supra* note 62, at 122 (footnote omitted); *see also* Stephen A. Stripp, *An Analysis of the Role of the Bankruptcy Judge and the Use of Judicial Time*, 23 SETON HALL L. REV. 1329, 1330 (1993) ("The fundamental truth which is the basis for this article is that the bankruptcy caseload in many districts in this country is so overwhelming that the bankruptcy judges are sorely pressed in the struggle to cope with it.").

68. BAPs in three circuits—the Eighth, Ninth, and Tenth—have reached this conclusion. *E.g.*, Concannon v. Imperial Cap. Bank (*In re* Concannon), 338 B.R. 90, 95 (B.A.P. 9th Cir. 2006) (reaffirming that the BAP will not overrule its prior rulings unless an intervening circuit court or Supreme Court decision, or subsequent legislation, undermines those rulings); Salomon N. Am. v. Knupfer (*In re* Wind N' Wave), 328 B.R. 176, 181 (B.A.P. 9th Cir. 2005) (same); Blagg v. Miller (*In re* Blagg), 223 B.R. 795, 804 (B.A.P. 10th Cir. 1998) ("Our decision is dictated by the principle that we are bound by prior panel decisions. A panel cannot overrule the judgment of another panel of the court."), *appeal dismissed*, 198 F.3d 257 (10th Cir. 1999); Smolen v. Hatley (*In re* Hatley), 227 B.R. 757, 761 (B.A.P. 10th Cir. 1998) (same), *aff'd*, 194 F.3d 1320 (10th Cir. 1999); Luedtke v. Nationsbanc Mortgage Co. (*In re* Luedtke), 215 B.R. 390, 391 (B.A.P. 8th Cir. 1997) (relying on circuit court precedent that circuit court panel decisions bind subsequent circuit court panels to announce rule that BAP decisions bind subsequent BAP panels); Ball v. Payco-Gen. Am. Credits, Inc. (*In re* Ball), 185 B.R. 595, 597 (B.A.P. 9th Cir. 1995) ("We will not overrule our prior rulings unless a Ninth Circuit Court of Appeals decision, Supreme Court decision or subsequent legislation has undermined those rulings.").

69. Philadelphia Life Ins. Co. v. Proudfoot (*In re* Proudfoot), 144 B.R. 876, 879 (B.A.P. 9th Cir. 1992) ("[B]AP decisions originating in any district in the Ninth Circuit are binding precedent on all bankruptcy courts within the Ninth Circuit in the absence of contrary authority from the district court for the district in which the bankruptcy court sits."); *In re* Windmill Farms, Inc., 70 B.R. 618, 622 (B.A.P. 9th Cir. 1987), *rev'd on other grounds*, 841 F.2d 1467 (9th Cir. 1988).

70. *Compare, e.g.*, Ore. Higher Educ. Assistance Found. v. Selden (*In re* Selden), 121 B.R. 59, 62 (D. Ore. 1990) (stating that BAP decisions bind only those bankruptcy courts sitting in the district out of which the appeal arose), *with* Daly v. Deptula (*In re* Carrozzella & Richardson), 255 B.R. 267, 273 (Bankr. D. Conn. 2000) (rejecting argument that substantial motivation of Congress in creating BAPs was to generate a uniform body of bankruptcy law within the circuits, concluding that there is no principled reason why decisions of a BAP should have more precedential authority than those of district courts, and finding it odd and unseemly, if not unconstitutional, for a BAP—comprised of three non-Article III judges—to be generating for bankruptcy judges, and perhaps also for district judges, the law of the circuit until the circuit court had spoken), *In re* Virden, 279 B.R. 401, 409 n.12 (Bankr. D. Mass. 2002) (quoting *In re Carrozzella*, 255 B.R. at 272-73), *and* Life Ins. Co. of Va. v. Barakat (*In re* Barakat), 173 B.R. 672, 676–80 (Bankr. C.D. Cal. 1994) (concluding that BAPs bind bankruptcy courts on matters arising in core proceedings even though district courts do not), *aff'd on other grounds*, 99 F.3d 1520 (9th Cir. 1996). For further discussion regarding the precedential effect of BAP decisions,

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one district judge is generally not bound to follow the ruling of another district judge—even one in the same district—on matters of bankruptcy or otherwise.[71] And bankruptcy courts have held that they are not bound by the holding of a single district judge on a multijudge district court.[72] Therefore, BAPs comport more with the standard model of appellate hierarchy than do district courts hearing bankruptcy appeals.[73]

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see *Salomon N. Am.*, 328 B.R. at 181 n.2 (noting the Ninth Circuit BAP's prior holding that its decisions bind bankruptcy courts within the circuit, but also recognizing that some bankruptcy courts have rejected that holding); Zimmer v. PSB Lending Corp. (*In re* Zimmer), 313 F.3d 1220, 1225 n.3 (9th Cir. 2002) (describing "binding nature of Bankruptcy Appellate Panel decisions" as "an open question," and "join[ing] Judge O'Scannlain's call for the [Ninth Circuit] Judicial Council to consider an order clarifying whether the bankruptcy courts must follow the BAP"); Bank of Maui v. Estate Analysis, Inc., 904 F.2d 470, 472 (9th Cir. 1989) ("BAP decisions cannot bind the district courts themselves. As article III courts, the district courts must always be free to decline to follow BAP decisions and to formulate their own rules within their jurisdiction."); *id.* at 472 (O'Scannlain, J., concurring) (writing "separately to propose that the Judicial Council of this Circuit consider adoption of an order requiring that Bankruptcy Appellate Panel . . . decisions shall bind all of the bankruptcy courts of the circuit, subject to the restrictions imposed by article III so well discussed in the [court's] opinion"); Paul M. Baisier & David G. Epstein, *Resolving Still Unresolved Issues of Bankruptcy Law: A Fence or an Ambulance*, 69 AM. BANKR. L.J. 525, 531 (1995) ("Even stronger arguments can be made against any *stare decisis* effect at all for the opinion of a bankruptcy appellate panel."); Chemerinsky, *supra* note 4, at 129–30 ("I would argue that district courts should be bound by BAP decisions. The view that an Article I court can never bind an Article III court is an overstatement."); Trujillo, *supra* note 60, at 494 n.23 (arguing that BAPs function as district courts, and accordingly cannot issue binding opinions).

71. *See* Baisier & Epstein, *supra* note 70, at 529 (noting that "[n]one of the district judges is bound by a bankruptcy appeals decision of a district judge from one of the other 93 district courts," and that "district judges in multi-judge districts are not even bound by the bankruptcy appeals decisions of other judges from that same district"). *But see* Bussel, *supra* note 13, at 1095–96; *id.* at 1096 n.116 ("I am aware of only a handful of cases where district judges in the same district adopt differing views of the same question of bankruptcy law and in those cases one or both of the decisions is unpublished.").

72. *See, e.g.*, *In re* Romano, 350 B.R. 276, 281 (Bankr. E.D. La. 2005) ("[A] single decision of a district court in this multi-judge district is not binding upon this court."); *id.* at 277–81 (summarizing authority for both sides); Paul Steven Singerman & Paul A. Avron, *Of Precedents and Bankruptcy Court Independence*, 22 AM. BANKR. INST. J. 1, 56–57 (2003) (noting conflict, gathering authorities, and finding that a majority of bankruptcy courts have held that they are not bound by the decision of a single district court judge in a multi-judge district); Trujillo, *supra* note 60, at 494 (arguing that a bankruptcy decision by one bankruptcy judge cannot bind other bankruptcy judges in the same district, and that a bankruptcy decision by one district judge cannot bind other district judges or bankruptcy judges in the same district). *But see* Chemerinsky, *supra* note 4, at 129 ("While a district court exercising original jurisdiction cannot bind other district courts, its decisions should be binding on bankruptcy courts when the district court is serving as an appeals court.").

73. Our point here is simply that BAPs seem to fit more cleanly into the standard hierarchical appellate model than do district courts sitting on appeal, not that that is necessarily mandated under the current statutory scheme or normatively desirable. The latter two points are debatable.

With respect to the current statutory scheme, there are statements in the legislative history indicating that Congress created the BAPs to help foster greater uniformity in bankruptcy law.

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See, e.g., 140 CONG. REC. S14,463 (daily ed. Oct. 6, 1994) (statement of Sen. Heflin) ("It should be recognized that the creation of a bankruptcy appellate panel service can help to establish a dependable body of bankruptcy case law."). *But see Daly*, 255 B.R. at 273:

> Any suggestion that Congress' authorization of the creation of BAP Services was motivated substantially by its desire to create a uniform body of bankruptcy law within the circuits is not supported by the BAP Service's history, which instead suggests that BAPs were conceived primarily as a tool for relieving district court judges of an ofttimes undesirable and burdensome aspect of their workload.

At the same time, one can point to the certification procedure in section 158(d)(2) of the Judicial Code—under which courts of appeals may decide interlocutory appeals when, among other circumstances, the question raised is one "as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States," 28 U.S.C. § 158(d)(2)(A)(i) (Supp. V 2005)—as evidence that Congress chose other, explicit means of increasing bankruptcy law uniformity. *See* H.R. REP. NO. 109-31, at 148 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 206.

Commentators are divided over whether BAP decisions bind bankruptcy courts. *Compare, e.g.*, Bussel, *supra* note 13, at 1098 (arguing that bankruptcy courts should consider both BAP and district court decisions as binding precedent), Chemerinsky, *supra* note 4, at 128 ("From [a] functional perspective, I think that BAP decisions clearly should be binding on bankruptcy courts."), *and* Camp, *supra* note 52, at 1676–84 (arguing that BAPs should bind both bankruptcy and district courts within a circuit), *with* Trujillo, *supra* note 60, at 492 ("[O]nly opinions of the U.S. courts of appeals and the U.S. Supreme Court bind bankruptcy courts by reason of formal hierarchy."), *and* Caminker, *supra* note 13, at 870–72 (arguing that theoretical considerations argue in favor of bankruptcy courts being bound by district court decisions). Moreover, strict application of vertical stare decisis is difficult, insofar as it is not certain until after the bankruptcy court has issued judgment into which appellate path the case will proceed. *Cf.* Camp, *supra* note 52, at 1682:

> Since bankruptcy judges do not know at the time they make a decision whether it will be a BAP or a district court that will hear any appeal, and since no district court has so far considered itself bound by a BAP, it is no surprise that many bankruptcy judges feel free to disregard BAP decisions.

Compare this to the United States Tax Court, which considers itself bound by its own precedent, except insofar as it has also held that it is bound "to follow a Court of Appeals decision which is squarely in point where appeal from [the] decision lies to that Court of Appeals." Golsen v. Comm'r, 54 T.C. 742, 756–57 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971). Because the court of appeals to which a taxpayer will appeal is determined by his state of residence, 26 U.S.C. § 7482(b)(1) (2000), it is always clear at the time of decision which circuit's precedent is binding.

As to the normative question, there are those who argue that an increase in application of stare decisis would be normatively desirable. *See, e.g.*, Boroff, *supra* note 52, at 215, 221 (arguing that the current dual track appellate system makes it difficult to generate binding precedent, and that the system be changed to allow for development of binding precedent); Bussel, *supra* note 13, at 1095 n.114 ("[L]ogically . . . district courts . . . as well as bankruptcy courts might be bound by prior BAP decisions."). There also are strong arguments, however, that a structure other than the standard appellate hierarchy might be desirable. First, one of the bases on which the pyramidal appellate hierarchy functions is the notion that issues "percolate" up from the lower courts to the higher courts. It is the desire for percolation that, commentators argue, restricts (and properly so) application of horizontal stare decisis to the same court and not to sibling courts of equal hierarchical stature. *See* Samuel Estreicher & Richard L. Revesz, *The Uneasy Case Against Intracircuit Nonacquiescence: A Reply*, 99 YALE L.J. 831, 834 (1990) ("The rejection of intercircuit stare decisis is premised upon—and given the obvious costs in deferring uniformity, is explainable only in terms of—the benefits of dialogue among the circuits."); *see also* Maxwell Stearns, *Standing Back from the Forest: Justiciability and Social Choice*, 83 CAL.

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L. REV. 1309, 1351–52 (1995) (arguing, based upon social choice theory, that the Supreme Court "would desire intra- but not inter-circuit stare decisis," since such a regime "avoids the irrationality that would result from cyclical preferences *within* particular circuits, while, at the same time, reducing the likelihood that legal doctrine that results from path manipulation in a *given* circuit will be replicated *across* the circuits."). *But cf.* O'Hara, *supra* note 17, at 772 (arguing that the absence of stare decisis across circuits is justified on the ground that "an agreement to follow another circuit's precedents will not save the judges in a particular circuit much time"). In the case of appeals of core bankruptcy matters, there are, anomalously, two levels of intermediate appeals. Perhaps, then, in order for issues properly to percolate up to the courts of appeals, there ought to be no horizontal stare decisis at the first intermediate level—that is, at the level of the BAPs and district courts.

Second, given that the BAPs and district courts lie at the same hierarchical level, it might not make sense for horizontal stare decisis rules to apply to BAPs but not district courts. Perhaps, once again, horizontal stare decisis should not apply at all. One might argue, to the contrary, that horizontal stare decisis should apply to both courts. *See* Chemerinsky, *supra* note 4, at 129.

Third, perhaps bankruptcy law and society would be better served by a system other than the traditional appellate hierarchy, at the lower levels of appeals of core bankruptcy matters. Civil law systems rely far less on precedent than does the common law system dominant in the United States. *See supra* note 15 and accompanying text. Civil law judiciaries decide cases based largely upon the proper interpretation of the governing "code." Insofar as bankruptcy turns upon the content of a code—the "Bankruptcy Code"—bankruptcy seems to provide an ideal setting for application of such judicial review. *Cf.* Lawrence Ponoroff, *The Dubious Role of Precedent in the Quest for First Principles in the Reform of the Bankruptcy Code: Some Lessons from the Civil Law and Realist Traditions*, 74 AM. BANKR. L.J. 173, 216 (2000) (arguing for "a softer, more nimble, rule of precedent [that] would improve the quality of outcomes in particular bankruptcy cases"). Interestingly, while Ponoroff facially argues in favor of increased reliance on a civil law jurisprudential approach in the bankruptcy context, his arguments do not seem to accord so well with the principles underlying the structure of judicial review in civil law systems. Dean Ponoroff laments:

> The opportunity for two levels of appeal as a matter of right has contributed to the crush of reported decisions, a phenomenon that, in my view, has hampered pragmatic and considered decisionmaking in the bankruptcy courts. That problem is compounded by the disturbing rise in adherence to textual or plain meaning methods of interpretation in bankruptcy cases, particularly in the decisions of the circuit courts of appeal[s].

Id. at 181 (footnotes omitted). Ponoroff thus seems more concerned with allowing different interpretations of the Bankruptcy Code to percolate up through the judiciary. He also seems to embrace more of a realist conception of bankruptcy law than a civil law conception, explaining that "[a] more forward-looking, and less technical and 'busy,' code would abate the pressure to decide and review cases on the kind of formal, textualist grounds that typically prove the most difficult to distinguish in subsequent cases." *Id.* at 216. Indeed, Ponoroff acknowledges that he endorses "a different style of judging, one that eschews a strict adherence to precedent, but not by any means civilian, to the extent that style is perceived as the unimaginative and rote application of positive legal rules to particular fact situations performed by a cadre of mid-level bureaucrats." *Id.* at 223. "Rather," he endorses "a style that actually places greater responsibility on the decisionmaker to reason analogically from code principles, as well as from subsidiary sources such as custom, usages, settled jurisprudential doctrine, and equity." *Id.* at 223–24.

To the possible objection that the fact that the higher levels of bankruptcy judicial review—courts of appeals and the Supreme Court—rely upon the standard appellate hierarchy, one can point to the coexistence of Louisiana's civil law system within the United States judicial system as an example of how such a system can function. *See, e.g.*, Shelp v. Nat'l Sur. Corp., 333 F.2d 431, 439 (5th Cir. 1964) (in determining Louisiana law under *Erie*, federal courts should apply precedential rules that Louisiana's highest court would apply); Alvin Rubin, *Hazards of a*

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It is only the final criterion—the question of judicial independence—on which district courts have some advantage over bankruptcy appellate panels. Judicial independence has been considered to be a function of life tenure and the guarantee of nonreduction in salary. Both attributes are enshrined in the Article III status conferred on district judges, whereas bankruptcy judges who sit on bankruptcy appellate panels do not get the benefit of either attribute because of their non-Article III status.[74]

On this basis, one might readily conclude that district judges enjoy judicial independence while bankruptcy judges do not. But this would be a facile conclusion that improperly casts the assessment of judicial independence as an all-or-nothing proposition—that is, judicial independence is attainable only through life tenure and the guarantee of nonreducible remuneration. Careful consideration of the matter, however, suggests that the difference may be narrower than that generally perceived by courts and commentators.

A more felicitous account reveals that the term of appointment for bankruptcy judges, the standard for their removal from office, the treatment of their compensation, and the manner of their appointment afford bankruptcy judges a moderate amount of judicial independence. First, although bankruptcy judges are not granted life

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Civilian Venturer in Federal Court: Travel and Travail on the Erie *Railroad*, 48 LA. L. REV. 1369 (1988). *But see* John Burritt McArthur, *Good Intentions Gone Bad: The Special No-Deference* Erie *Rule for Louisiana State Court Decisions*, 66 LA. L. REV. 313 (2006). Indeed, the notion that bankruptcy courts do not consider themselves bound by rulings of single district judges in multi-judge districts—and therefore presumably do at some point consider themselves bound once a number of district judges in the same district reach the same conclusion—resembles the "jurisprudence constante" under which precedent develops in Louisiana and other civil law systems. *See, e.g.*, Kathryn Venturatos Lorio, *The Louisiana Civil Law Tradition: Archaic or Prophetic in the Twenty-First Century*, 63 LA. L. REV. 1, 6 (2002) (describing jurisprudence constante as a doctrine under which "a case may be used to discern a pattern [of decisions] that may aid in interpretation"); Stearns, *supra*, at 1357 n.143 (discussing jurisprudence constante); *cf.* RICHARD A. POSNER, THE FEDERAL COURTS: CRISIS AND REFORM 257 (1985) (proposing, "as a special rule of *stare decisis*, the practice that when the first three circuits to decide an issue have decided it the same way, the remaining circuits defer to that decision"). Any potential difficulties in integrating a civil law precedential model into the larger common law-based federal court system would be mitigated by the fact that the vast majority of bankruptcy cases are not appealed beyond the first level of intermediate appellate review. *See* Bussel, *supra* note 13, at 1091; *cf.* Chemerinsky, *supra* note 4, at 122 (noting that "[b]ankruptcy law matters seem to fit in between . . . two poles" in that "bankruptcy statutes are filled with ambiguities that require court interpretation," while there also "probably exist particular types of disputes where the law-giving function of the court is less important and alternative dispute resolution would be potentially more efficient"). *But see* Bussel, *supra* note 13, at 1097 ("I would have difficulty understanding why Congress would intend BAPs and district courts to serve merely as rest-stops on the road to real appellate review.").

74. *See supra* notes 36–38 and accompanying text.

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tenure, their terms last fourteen years.[75] Moreover, their appointments may be renewed,[76] and indeed in most cases are renewed.[77] While judicial independence may be fostered by life tenure, the renewable, fourteen-year term of bankruptcy judges effectively allows them to serve as long as many of their Article III counterparts.[78] Even if the absence of life tenure gives Congress leeway to reduce the term of bankruptcy judges[79]—an option that it has never exercised since it created the bankruptcy courts—the fourteen-year, renewable term still grants a fair amount of judicial independence to bankruptcy judges.[80]

Second, the Judicial Code prescribes that a bankruptcy judge may be removed "only for incompetence, misconduct, neglect of duty, or physical or mental disability,"[81] whereas the Constitution mandates that an Article III judge will hold his or her office only "during good Behaviour."[82] The broad language of the good-behavior standard for

75. 28 U.S.C. § 152(a)(1) (2000 & Supp. V 2005).

76. *See* Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 303, 110 Stat. 3847, 3852 (providing that, "[w]hen filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States").

77. *See* Mabey, *supra* note 62, at 107 (noting that, of the 115 bankruptcy judges who left the bench in the decade prior to 2005, only 10 did so as a result of not being reappointed); *see also* U.S. Court of Appeals for the Ninth Circuit, Bankruptcy Judge Reappointment Regulations § 1(e) (2001), *available at* http://207.41.19.15/Web/OCELibra.nsf (follow "Bankruptcy" hyperlink; then follow "Bankruptcy Judge Reappointment Regulations" hyperlink) (last visited Oct. 25, 2008) (providing that "[t]he court of appeals shall decide whether or not to reappoint the incumbent [bankruptcy] judge *before* considering other potentially qualified candidates" (emphasis added)). To the contrary, one might argue that the fact that bankruptcy judges must seek, and generally receive, reappointment, demonstrates the *absence* of judicial independence.

78. *See In re* Grabill Corp., 976 F.2d 1126, 1129 (7th Cir. 1992) (Easterbrook, J., dissenting) ("Rhetoric about life tenure notwithstanding, there is no substantial difference between the 14-year term to which bankruptcy judges are appointed and service 'during good Behavior' for Article III judges."). Article III judges (other than Supreme Court Justices) whose service on the federal bench terminated between 1983 and 2003 served, on average, twenty-four years. Judith Resnik, *Judicial Selection and Democratic Theory: Demand, Supply, and Life Tenure*, 26 CARDOZO L. REV. 579, 618 chart 4 (2005).

79. While Congress may reduce the duration of the fixed-term appointment for bankruptcy judges at any point via statute, the constitutionally guaranteed life tenure granted to Article III judges could only be stripped away via constitutional amendment (an exponentially more difficult proposition).

80. *See* COMM'N ON THE BANKR. LAWS OF THE U.S., REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 93-137, pt. 1, at 95 (1973) (proposing various reforms "to enhance the real and apparent judicial independence of bankruptcy judges," including "[e]xtension of the term of the bankruptcy judges from the present six years to the proposed fifteen years"); *cf.* Nash, *supra* note 20, at 2196 (observing that "one can question the degree to which life tenure in fact secures for judges a larger measure of judicial independence").

81. 28 U.S.C. § 152(e) (2000).

82. U.S. CONST. art. III, § 1.

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removal arguably encompasses the grounds set forth by the Judicial Code for removal of bankruptcy judges. Moreover, while Article III judges may be removed only by impeachment,[83] and bankruptcy judges may be removed by a majority of all of the judges of the judicial council of the bankruptcy judge's circuit,[84] the practical reality is that very few bankruptcy judges have been removed from office.[85] If the specter of removal does not appear to be greater for bankruptcy judges than Article III judges, it follows that bankruptcy judges need not limit their behavior in ways that would prevent them from acting as independently as Article III judges.

Third, although the Supreme Court has identified the "fixed and irreducible" compensation provided to Article III judges by the Compensation Clause as a hallmark of an independent judiciary,[86] the lack of a similar guarantee in the salaries of bankruptcy judges should not be overemphasized in assessing their judicial independence. Since Congress enacted the Bankruptcy Code in 1978 and created the current scheme for federal bankruptcy judgeships, the salary of bankruptcy judges has only increased.[87] Moreover, since 1987, bankruptcy judges have received a salary at an annual rate that equals 92% of the salary of district court judges (as determined by section 135 of the Judicial Code).[88] Thus, for the past two decades, bankruptcy judges have had fixed compensation that nearly equals that of district court judges.

Finally, if one takes into account the substantive differences in the appointment processes of bankruptcy judges and district judges and the consequences that flow therefrom, it becomes clear that bankruptcy judges may be better situated than district judges to resist the political influence that would threaten to compromise an independent judiciary. While the judicial appointment process for

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83. N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 59 (1982) (Brennan, J., plurality opinion) ("The 'good Behaviour' Clause guarantees that Art. III judges shall enjoy life tenure, subject only to removal by impeachment."). *But see* Saikrishna Prakash & Steven D. Smith, *How to Remove a Federal Judge*, 116 YALE. L.J. 72 (2006) (arguing that federal judges may be removed from office by means other than impeachment).

84. 28 U.S.C. § 152(e).

85. *See* Mabey, *supra* note 62, at 107 (listing reasons for departure from the bench for the 115 bankruptcy judges who did so in the decade prior to 2005, but not mentioning removal as one of those reasons). On the other hand, one might argue that the low rate of removal of bankruptcy judges reflects the *absence* of judicial independence: bankruptcy judges have behaved in a way so as to avoid removal.

86. *N. Pipeline*, 458 U.S. 50 at 59 (Brennan, J., plurality opinion).

87. *See* Mabey, *supra* note 62, app. A.

88. 28 U.S.C. § 153(a). Congress amended the Judicial Code in 1987 to provide for the current salary structure for bankruptcy judges. Pub. L. No. 100-202, § 408(a), 101 Stat. 1329, 1329-26 (1987).

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Article III judges has become increasingly politicized, evidenced most recently by the tendency for close examination of the ideology of nominees,[89] the appointment process for bankruptcy judges has seemingly remained nonpolitical. The Judicial Code charges the appointment task to the court of appeals for the circuit in which there exists a vacancy for a bankruptcy judgeship.[90] Thus, the appointment process involves judges selecting judges—a presumably nonpolitical process.[91] This nonpolitical process has produced a bankruptcy bench

89. *See* Nash, *supra* note 20, at 2182–92.

90. 28 U.S.C § 152(a)(1) (Supp. V 2005); *id.* § 152(a)(3) (2000).

91. The possibility exists, however, that the judicial appointment of judges may substitute judicial patronage for political patronage and thus compromise judicial independence. *See* Judith Resnik, *"Uncle Sam Modernizes His Justice": Inventing the Federal District Courts of the Twentieth Century for the District of Columbia and the Nation*, 90 GEO. L.J. 607, 673 (2002). *But see* Posner, *supra* note 23, at 81–82 ("Appointments by the judicial branch are not as controversial, because judges belong to different parties."). Furthermore, one may argue that, insofar as the circuit judges are a product of a politicized appointment process, they themselves may be politicized and thus infuse politics into the appointment process for bankruptcy judges. The merit-selection process for appointing bankruptcy judges, however, seems to have provided little opportunity for such politicization to take root. A quick look at the manner in which the Ninth Circuit conducts this process (one that seems representative of the process conducted in other circuits) suggests why this has been the case.

Interested candidates must submit applications for the position. *See* Judicial Council of the Ninth Circuit, Regulations Governing the Appointment of U.S. Bankruptcy Judges § 2.02 (2001), *available at* http://207.41.19.15/Web/OCELibra.nsf (follow "Bankruptcy" hyperlink; then follow "Regulations Governing the Appointment of U.S. Bankruptcy Judges" hyperlink) (last visited Oct. 25, 2008). The Circuit advertises nationally and encourages the federal judicial districts within the circuit to advertise intensely and locally. *Id.* § 2.01. A local merit screening committee, which generally consists of (1) the chief judge of the district in which the bankruptcy judge is to be appointed, (2) the president of the state bar association, (3) the president of one or more local bar associations within the district, (4) the dean of a law school located within the district, (5) the administrative circuit judge of the circuit geographical unit in which the bankruptcy judge is to be appointed, and (6) the chief bankruptcy judge of the district in which the bankruptcy judge is to be appointed. *Id.* § 3.02(a). The committee recommends five applicants to the Court-Council Committee on Bankruptcy Appointments, whose membership includes three circuit judges who serve as voting members. *See id.* §§ 3.03(c)(1), 3.04(b). The Court-Council Committee circulates a report to the Ninth Circuit Judicial Council recommending a candidate for appointment, and that report will be deemed to be the Judicial Council's recommendation to the Court of Appeals (unless the Council determines that the Court-Council Committee should reconsider its recommendation). *Id.* §§ 3.04(c)(5), 3.05(a). The recommended candidate is appointed upon a majority vote of the members of the Court of Appeals. 28 U.S.C § 152(a)(3) (2000).

For the argument that the nonpolitical nature of the bankruptcy bench may be attributable to the opacity of the process for selecting bankruptcy judges, see Rafael I. Pardo, *The Utility of Opacity in Judicial Selection*, 64 N.Y.U. ANN. SURV. AM. L. (forthcoming 2008), *available at* http://ssrn.com/abstract=1205002.

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populated mostly by specialists with bankruptcy expertise[92] who themselves could be characterized as nonpolitical.[93]

When one considers the type of jurist produced by the judicial selection process for bankruptcy judges in conjunction with their term of appointment, the standard for their removal, and the treatment afforded to their compensation, it would appear that bankruptcy judges have achieved a considerable degree of judicial independence.[94] Accordingly, while the district court seems to enjoy some advantage over BAPs with respect to this final attribute identified as improving the quality of appellate review, the advantage is not likely to be substantial. We summarize the differences in the attributes of the BAPs and district courts below in Table 1.

TABLE 1
STRUCTURE OF DISTRICT COURTS AND BANKRUPTCY APPELLATE PANELS

First-Tier Appellate Court	Number of Judges	Bankruptcy Expertise	Other Lawfinding Ability	Traditional Appellate Hierarchy	Judicial Independence
District Court	Single judge	Unlikely	Some	Weak	Strong
Bankruptcy Appellate Panel	Panel of three judges	Yes	Some	Strong	Moderate

B. Hypotheses

Insofar as BAPs exhibit more of the features associated with quality appellate review than do federal district courts, the discussion in Part I suggests that BAPs will provide a higher quality of

92. *See* Mabey, *supra* note 62, at 107 ("Most of the bankruptcy judges were bankruptcy practitioners in their prior careers.").

93. *Cf.* Resnik, *supra* note 91, at 670 ("Turn first to the advantages of judicial appointment of judges. As a few details of current practices illustrate, the judiciary has selected a high-quality and relatively nonpolitical corps of judges . . . .").

94. This state of affairs can be traced to congressional efforts in the 1970s to elevate the status of bankruptcy judges. Congress established in 1970 the Commission on the Bankruptcy Laws of the United States to evaluate the then-existing bankruptcy system and to suggest recommendations for its reform. Pub. L. No. 91-354, 84 Stat. 468 (1970). In its report, the Commission envisioned that improvements in the appointment, tenure, and compensation of bankruptcy judges would enhance their "real and apparent judicial independence." COMM'N ON THE BANKR. LAWS OF THE U.S., REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 93-137, pt.1, at 95 (1973).

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bankruptcy appellate review than their district court counterparts—assuming, of course, that the question of judicial independence does not outweigh other factors. Many challenges stand in the way of investigating this general claim, chief among them the difficulty in empirically testing the "correctness" of the dispositions rendered by the appellate court. Knowledge of this would be crucial for purposes of ascertaining whether the appellate court had appropriately performed its appellate function—that is, identifying error in those instances when it occurred. Making such a determination would necessarily involve content analysis of appellate opinions according to a particular metric of correctness. It is difficult to develop such a metric without infusing a degree of inherent subjectivity into its design. What we may deem to be a "correct" decision may be "incorrect" according to others. Accordingly, at the initial stage of empirical inquiry, we are not persuaded that detailed content analysis of appellate opinions is warranted.[95]

Absent detailed content analysis of appellate opinions, how might we empirically proceed with our inquiry into the quality of appellate review? Although we cannot empirically test the "correctness" of decisions, we can empirically test the *perception* held by other actors within the bankruptcy judicial system of the correctness of those decisions. For those bankruptcy appeals that proceed to the second tier of review, we can consider whether the court of appeals deemed proper the disposition rendered by the first-tier appellate court.

There are several ways in which the rate at which a higher court upholds a lower court's disposition may shed light upon judicial perceptions of correctness of lower court decisions.[96] First, there is a tautological sense in which what an appellate court says is, by

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95. Professor Frank Cross has expressed a similar view in his empirical study of decisions rendered by U.S. Courts of Appeals:

> [T]here are typically nonfrivolous legal arguments for each side in circuit court cases, so it is impossible to code certain cases as being legally correct (or incorrect) without the researcher second-guessing and effectively overriding the judge. Such an approach offers an unreliable tool for evaluating judicial decisions because it probably reflects more about the researcher than about the judges being evaluated. Research requires a more objective tool for evaluating the law.

FRANK B. CROSS, DECISION MAKING IN THE U.S. COURTS OF APPEALS 46–47 (2007).

96. *But see* Wagner & Petherbridge, *supra* note 5, at 1127–28 (noting the limits of "result-oriented statistical studies"); Stephen J. Choi & G. Mitu Gulati, *Bias in Judicial Citations: A New Window into the Behavior of Judges?* 5 (N.Y.U. Law & Econ. Research Paper Series, Paper No. 06-29, 2006), *available at* http://ssrn.com/abstract=913663 (using empirical data to argue that judges of one political party are more likely to cite opinions authored by judges of the same party, especially in particular "high stakes" settings).

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definition, correct (unless, that is, the appellate court decision is itself reversed). Thus, if an appellate court affirms the disposition of a lower court, then the lower court's disposition was correct. Second, one can presume that the appellate court wishes to resolve the legal issues "correctly" for the parties and for future courts.[97] The law generally calls upon appellate courts to examine legal issues de novo without deference to the reasoning or conclusion of the court below.[98] Still, if the appellate court ultimately reaches the same conclusion as the court below, then it is accurate to say that the appellate court perceived the lower court's conclusion to be correct.[99]

However, courts of appeals may not always affirm a decision because they believe the earlier decision was "correct." Judges need not be so selfless. Indeed, there is a school of thought that views judges, like all people, as self-interested actors.[100] Judges may be interested in keeping their jobs—for bankruptcy judges, this translates to reappointment. Insofar as district judges enjoy Article III status, they have life tenure and are guaranteed not to suffer any salary reductions. Still, even Article III judges may have dreams of

97. *See supra* note 17.

98. *See, e.g.*, Concannon v. Imperial Capital Bank (*In re* Concannon), 338 B.R. 90, 93 (B.A.P. 9th Cir. 2006) ("[W]e review the bankruptcy court's conclusions of law and interpretation of the Bankruptcy Code *de novo*."); Official Unsecured Creditors Comm. of Valley-Vulcan Mold Co. v. Ampco-Pittsburgh Corp. (*In re* Valley-Vulcan Mold Co.), 237 B.R. 322, 326 (B.A.P. 6th Cir. 1999) (stating that conclusions of law by bankruptcy court are reviewed by BAP de novo); 9 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2588, at 470 (2006).

99. It is possible that, notwithstanding the legal standard to the contrary, appellate courts do not always reexamine legal issues de novo in practice. Perhaps, for example, courts of appeals are inclined to rely upon the expertise of BAPs (*sub rosa*, of course, since the law dictates otherwise) and thus are inclined to affirm BAP opinions. Or, perhaps equally, the appellate courts might more often than not affirm district court opinions on the ground that district judges enjoy Article III status and thus are independent. In either case, it would be accurate to view an appellate court affirmance as embracing the lower court opinion as correct.

100. *See* O'Hara, *supra* note 17, at 737–38 (suggesting that judges make decisions "to impose their normative views, beliefs, and mores on [society]"); Richard A. Posner, *What Do Judges and Justices Maximize? (The Same Thing Everyone Else Does)*, 3 SUP. CT. ECON. REV. 1, 39 (1993) ("Judges are rational, and they pursue instrumental and consumption goals of the same general kind and in the same general way that private persons do.").

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higher office.[101] Article III judges—and, for that matter, BAP judges—may also wish to avoid the "ignominy" of reversal by a higher court.[102]

Even if BAP judges and district judges have an aversion to reversal, that ought not to change appellate judges' behavior in terms of upholding the conclusion of lower court decisions, assuming at least that the reappointment or elevation process does not demand political decisionmaking.[103] Put another way, a judge—whether a bankruptcy judge serving on a BAP or a district judge—who wants to be reappointed or elevated has essentially the same incentive to decide cases correctly as do judges who simply want to decide the disputes before them correctly. As such, a court reviewing a first-level intermediate bankruptcy appellate decision—whether a panel of a court of appeals or the Supreme Court—should adopt the conclusion of the lower court if it deems that conclusion to be "correct." Similarly, appellate court judges should seek to affirm correct decisions—and reverse incorrect ones—even if their motives are not strictly to reach correct outcomes.

Based upon the foregoing, we offer the following hypothesis.

Hypothesis 1: Courts of appeals more likely will uphold the dispositions rendered by BAPs than those rendered by district courts.

Citation rates provide yet another basis on which to test empirically the *perceived* correctness of an appellate opinion.[104] To the

101. *See* Nash, *supra* note 20, at 2196. Indeed, Professor Resnik has identified such careerism by bankruptcy judges. *See* Resnik, *supra* note 91, at 673 (observing that "[a]n increasingly well-trodden path is for a person to shift from magistrate or bankruptcy judge to district court judge"). A recent study of the bankruptcy bench, however, indicated that only eight of the 115 bankruptcy judges who left the bench from 1995 to 2005 did so as a result of appointment to an Article III judgeship. Mabey, *supra* note 62, at 107.

102. *See, e.g.*, Caminker, *supra* note 13, at 827 & n.40 and the authorities cited therein; *see also* Nash, *supra* note 20, at 2197–98 (discussing the desire of Article III judges to avoid impeachment, public chastisement, and overruling by the legislature).

103. Note, however, that other motivations may explain bankruptcy judges' behavior. *See, e.g.*, LYNN M. LOPUCKI, COURTING FAILURE: HOW COMPETITION FOR BIG CASES IS CORRUPTING THE BANKRUPTCY COURTS (2005) (arguing that bankruptcy judges in different districts compete for large corporate bankruptcy cases); Marcus Cole, *'Delaware Is Not a State': Are We Witnessing Jurisdictional Competition in Bankruptcy?*, 55 VAND. L. REV. 1845, 1890–93 (2002) (arguing that, in order to conform to dominant state culture favorable to corporations, Delaware bankruptcy judges compete for corporate bankruptcy filings).

104. *See, e.g.*, William M. Landes & Richard A. Posner, *Legal Precedent: A Theoretical and Empirical Analysis*, 19 J.L. & ECON. 249 (1976) (arguing that citation practices are not essentially a matter of taste but rather are systematic and susceptible to empirical study); John Henry Merryman, *The Authority of Authority: What the California Supreme Court Cited in 1950*, 6 STAN. L. REV. 613 (1954); John Henry Merryman, *Toward a Theory of Citations: An Empirical Study of the Citation Practice of the California Supreme Court in 1950, 1960, and 1970*, 50 S.

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extent that citation of one court by another reflects the citing court's view that the other court was "correct" in some way, the notion of correctness is, in different ways, both narrower and broader than correctness in the context of affirmation on direct appeal. It is narrower in that the citing court well may be citing a case not based upon a broad holding, but rather based upon some narrow holding or even dicta. It is broader in that, unlike a court that affirms a lower court's disposition even though it disagrees with its reasoning, a court that cites to another court's decision positively at some level agrees with some aspect of the court's reasoning.[105] Of course, there may be situations where a court cites another court's opinion simply because it perceives the other court's opinion to be binding precedent.[106] For this reason, we consider the results of extracircuit citations and citations by courts of appeals to BAPs and district courts—settings where there is no issue of binding precedent and citation is purely a matter of choice—to be especially informative.[107]

Within this context, one can point to two broad notions as to why courts cite other courts' opinions; both accord with our broad understanding of "correctness." First, a court may cite to another court's decision because it is truly influenced by the other court's reasoning.[108] If this is true, then the citing court in some sense finds the other court's reasoning to be "correct." Alternatively (or perhaps in addition), a court may cite to another court's decision not so much to explain the basis for its decision as to justify that decision, thus

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CAL. L. REV. 381 (1977) [hereinafter Merryman, *Toward a Theory of Citations*]; *cf.* William M. Landes, Lawrence Lessig & Michael E. Solimine, *Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges*, 27 J. LEGAL STUD. 271, 271–76 (1998) (noting that "[c]itations are at best a crude and rough proxy for measuring influence," and identifying potential drawbacks and limitations to empirical analyses of judicial citations).

105. *See* Landes & Posner, *supra* note 104, at 251 & n.3 (excluding from citation study "citations indicating rejection of the cited case as a precedent"). Our study also includes only positive citations. *But see* Landes et al., *supra* note 104, at 273 (deciding "not [to] distinguish . . . between favorable, critical, or distinguishing citations" insofar as "[c]ritical citations, in particular to opinions outside the citing circuit, are also a gauge of influence since it is easier to ignore an unimportant decision than to spell out reasons for not following it").

106. *See* Landes & Posner, *supra* note 104, at 251 (excluding from citation study nonprecedential citations).

107. David J. Walsh, *On the Meaning and Pattern of Legal Citations: Evidence from State Wrongful Discharge Precedent Cases*, 31 LAW & SOC'Y REV. 337, 340–41 (1997) (stating that cases cited for their influential nature will depend more on the quality of the decisions than the stature of the cited court).

108. *See id.* at 339 (suggesting that citations may "indicate intercourt communication and influence on judicial decisionmaking"); *cf.* McKenna & Wiggins, *supra* note 65, at 651 ("The availability of published opinions is generally thought to be an important aspect of the appellate process because written opinions provide guidance to judges and litigants by explaining the reasons for the appellate decision.").

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making the "primary function" of citations one of "legitimation."[109] Even if a court simply cites to another court to legitimate its own conclusions, we would say that the citing court perceives of the other court's reasoning as "correct" in some sense. Indeed, the citing court is using the citation to bolster the perception that its own reasoning and conclusions are "correct."

In light of the foregoing, and as detailed below, we proceed to test the *perceived* correctness of an appellate opinion by considering (1) the propensity of other federal courts within the bankruptcy judicial structure to cite the opinions issued by first-tier appellate courts, (2) the depth of treatment given to such opinions by federal citing courts (including direct quotation),[110] and (3) the immediacy with which such opinions garner a citing reference. Accordingly, we offer the following additional hypotheses.

Hypothesis 2A: Federal courts more likely will positively cite to BAP opinions than to district court opinions.

Hypothesis 2B: Federal courts will positively cite to BAP opinions more frequently than to district court opinions.

Hypothesis 3: Courts of appeals will cite more frequently to BAP opinions than to district court opinions.

Hypothesis 4: Bankruptcy courts will cite more frequently to BAP opinions than to district court opinions.

Hypothesis 5: BAPs will cite more frequently to BAP opinions than to district court opinions.

Hypothesis 6: District courts will cite more frequently to district court opinions than to BAP opinions.

Hypothesis 7: Federal courts outside of the circuit of the first-tier appellate court that issued the opinion (extracircuit federal courts) will cite more frequently to BAP opinions than to district court opinions.

Hypothesis 8: Positive federal citing references will afford a greater depth of treatment to BAP opinions than to district court opinions.

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109. Walsh, *supra* note 107, at 339.

110. *Cf. id.* at 342 (distinguishing between "strong" and "weak" citations).

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Hypothesis 9A: Positive federal citing references are more likely to quote directly BAP opinions than district court opinions.

Hypothesis 9B: Positive federal citing references will directly quote BAP opinions more frequently than district court opinions.

Hypothesis 10: The time within which a federal citing reference will be made to opinions issued on appeal by BAPs will be faster than to those issued by district courts.

Notably, in Hypotheses 2B, 3, 4, 5, and 7, we hypothesize that BAP opinions will be cited more often than district court opinions. We suggest this on the ground that several factors weigh in favor of the conclusion that BAPs will resolve issues of bankruptcy law "correctly," while only one factor—judicial independence—weighs in favor of district courts.

It seems to us highly probable, a priori, that bankruptcy judges and BAP judges are unlikely to be concerned with the fact that the bankruptcy judges who serve on BAPs do not enjoy Article III status.[111] Accordingly, we have developed Hypotheses 4 and 5. Hypothesis 3 is to similar effect. It seems to us that courts of appeals would be more focused on the structural factors favoring BAPs than the lack of Article III status—particularly with respect to subject-matter expertise.[112] Note first that, to the extent that the absence of Article III status may suggest a lack of independence vis-à-vis the issues in the case or the parties, that problem is greatly ameliorated by the fact that the parties must have consented in order to have the BAP issue a decision in the first place. Second, court of appeals judges presumably do not need the buffer of Article III status to remind them that they sit several notches above bankruptcy judges and BAPs on the judicial food chain.[113]

The same cannot be said for district judges. That district judges lobbied *against* giving bankruptcy judges Article III status demonstrates how important it is to district judges that bankruptcy

111. *See* McKenna & Wiggins, *supra* note 65, at 628 ("Bankruptcy appellate panel (BAP) judges provide specialized bankruptcy expertise that their bankruptcy colleagues . . . value highly as a source of authority.").

112. *See id.* at 678 ("Circuit judges, on average, have less specialized knowledge than bankruptcy judges, particularly those selected to serve on BAPs.").

113. It is also conceivable that courts of appeals in circuits that have BAPs are somewhat favorably inclined to cite to those BAPs, to the extent that they consider the BAPs to be adjuncts of the courts of appeals. *See supra* note 51.

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judges not enjoy this status.[114] Further, district judges lie on the same level as BAPs on the bankruptcy appellate hierarchy.[115] In short, it seems that district judges will think of BAPs as coequals in terms of hierarchy at best, and as subordinates at worst. Accordingly, we think it comparatively less likely that district judges, as opposed to other federal judges, would look to opinions authored by BAPs as opposed to district judges. It is on these bases that we preliminarily offer Hypothesis 6.

Given our hypotheses that other courts within the bankruptcy judicial structure are more likely to cite to BAP opinions (with the exception of Hypothesis 6), we further hypothesize that the underlying motivations prompting such citation practices will also lead these courts to discuss BAP opinions in greater detail and to cite to BAP opinions with more immediacy. We thus propose Hypotheses 9 and 10.

We now turn to evidence from the findings of our study and use that evidence to evaluate our hypotheses empirically.

III. EMPIRICAL ANALYSIS OF THE PERCEIVED QUALITY OF APPELLATE REVIEW: EVIDENCE FROM APPELLATE BANKRUPTCY OPINIONS

This Part presents the results of our empirical study of appellate bankruptcy opinions issued both at the first-tier and second-tier levels of appellate review in the bankruptcy judicial system. We test the hypotheses discussed above in Part II.B through the use of quantitative methodology and look for patterns that point to a relationship between the type of appellate court and the manner in which others perceive the quality of review provided by the court. In doing so, we seek to evaluate the theoretical assumptions that have evolved regarding those attributes considered to improve the quality of appellate review. We emphasize, however, that we do not purport to provide either a definitive or exhaustive account. We readily admit that we have chosen to study a narrow set of data from a snapshot in time that is not necessarily representative of the general universe of bankruptcy appeals. Aware of these limitations, we nonetheless have strong convictions that a great deal of valuable information can be gleaned from the data and that this information will help guide future discussions. Ultimately, our goal is to begin a shift away from generalization and abstraction and to generate a more concrete

114. *See supra* note 37 and accompanying text.

115. *See supra* fig.1.

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understanding of how differences in appellate structure affect the quality of appellate review.

This Part proceeds as follows. Part III.A sets forth the selection criteria used to constitute the sample for our study, discusses the major variables that we studied and incorporated into our statistical models, and details the general characteristics of the sample. Part III.B presents descriptive statistics comparing perceptions of the quality of appellate review provided by BAPs with perceptions of the quality of appellate review provided by district courts. Part III.C presents the central findings from our regression models, and Part III.D interprets our results.

If those attributes identified as improving the quality of appellate review truly do so, we would expect to see a positive relationship between BAP opinions and their perceived quality. Furthermore, we would expect this relationship to be stronger than the relationship, if any, between district court opinions and their perceived quality. In summary, we find that the rates at which courts of appeals affirm appeals from BAPs and district courts provide support for the claim that BAPs are perceived to provide a better quality of review than the district courts. Furthermore, data on subsequent citation by federal courts to the opinions rendered on appeal by BAPs and district courts lend considerable support to the claim. Given the possible impact of selection effects on the affirmance data as opposed to the citation data, we consider the strongly robust results we observe in the citation context to be more informative.

A. Sample Selection and Variables of Interest

1. Sample Selection

To constitute the sample of appellate bankruptcy opinions for this study, we formulated a search query in Westlaw's FBKR-CS database, which contains reported and unreported case law documents (i.e., decisions and orders) relating to bankruptcy that were issued by various courts—including the Supreme Court, circuit courts of appeals, BAPs, district courts, and bankruptcy courts.[116] Because we sought to create two separate databases, one for first-tier appellate dispositions by BAPs and district courts (the "first-tier database") and one for second-tier appellate dispositions by courts of appeals (the

116. Reported case law documents are those released for publication in *West Federal Reporters*.

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"second-tier database"), we ran two separate search queries. The first query consisted of the single term "11 U.S.C.," the standard citation to title 11 of the United States Code (commonly referred to as the "Bankruptcy Code"), coupled with (1) a date restriction that limited query retrieval to decisions and orders issued during the three-year period beginning on October 1, 1997 and ending on September 30, 2000;[117] and (2) a field restriction that limited query retrieval to decisions and orders whose preliminary field contained either the term "district court" or "bankruptcy appellate panel," but not "court of appeals."[118] The second query mirrored the first query with the exception that the field restriction limited query retrieval to decisions and orders whose preliminary field only contained the term "court of appeals."[119] The first query produced 1,487 documents, while the second query produced 871 documents. These large numbers clearly presented a challenge by virtue of the time it would take to review each document. We sought to reduce the time demand by randomly selecting for review approximately one-quarter of the documents produced by each search query—specifically, 372 documents from the first search query and 218 documents from the second search query.[120] In order to identify those that would be selected for inclusion and analysis in the two databases, we reviewed these documents according to the procedures described below.

We sought to include in the databases appeals that involved the resolution of dispositions rendered by bankruptcy courts in core proceedings.[121] We included only those documents that disposed of the appeal on the merits. (Because most of these documents were opinions rather than orders, for ease of reference we will collectively refer to the documents as opinions for the remainder of the Article.) Opinions that solely involved procedural dispositions (e.g., dismissal for lack of

117. Coverage for the FBKR-CS database begins with the year 1789.

118. The preliminary field for case law documents (i.e., decisions or orders issued by a court) in Westlaw is found at the top of such documents and generally contains the name of the court that issued the document. In its entirety, the first search query was as follows: "11 u.s.c." & pr ("district court" "bankruptcy appellate panel" % "court of appeals") & da (aft 9/30/1997 & bef 10/01/2000).

119. In its entirety, the second search query was as follows: "11 u.s.c." & pr ("court of appeals") & da (aft 9/30/1997 & bef 10/01/2000).

120. Each search query produced a numbered result list in which the opinions were listed in reverse chronological order. For the first-tier database, the results were organized by court in reverse chronological order (i.e., district court opinions were listed first in reverse chronological order followed by BAP opinions listed in reverse chronological order). We used a random number generator to select the opinions from each result list that we would analyze. For each result list, we randomly generated a set of unique numbers falling within the range of the total documents retrieved by the search query.

121. *See supra* notes 49–50 and accompanying text.

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jurisdiction) were excluded. In most instances, each opinion generated one observation. However, some opinions generated multiple observations. For example, some opinions resolved multiple appeals in separate and unrelated bankruptcy cases. In other instances, an opinion would resolve an appeal of separate orders that were entered by the bankruptcy court in distinct proceedings within the same case. Finally, by virtue of the identical date restriction included in both search queries, each opinion was issued during one of three government fiscal years: 1998, 1999, or 2000.[122]

Pursuant to these selection procedures, our first-tier database consists of 268 observations drawn from 264 opinions,[123] 4 of which produced a second observation. Our second-tier database consists of 170 observations drawn from 165 opinions,[124] 5 of which produced a second observation. Not surprisingly, for both databases, the majority of appeals wended their way through the district courts rather than the BAPs—although more so for appeals in the second-tier database (approximately 81%) than the first-tier database (approximately 60%).

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122. We tailored our search in this manner for two reasons. First, we wanted to facilitate comparisons of our data with official government data regarding bankruptcy appeals. Generally, such data track the government's fiscal year, which begins on October 1st and ends on September 30th, rather than the calendar year.

Second, we chose the specific time period for this study in order to capture the BAP experience at its apex in terms of participating circuits. BAPs did not become a fixture of the bankruptcy judicial system until 1996. The enactment of the Bankruptcy Code in 1978 amended the Judicial Code to permit, but not require, the establishment of BAPs on a circuit-by-circuit basis. Only the First and Ninth Circuits chose to do so, establishing their BAPs in 1979 and 1980, respectively. In the wake of the *Marathon* decision, however, the First Circuit concluded that continued operation of a BAP would be inappropriate until Congress remedied the defects in the constitutionally infirm, bankruptcy jurisdictional scheme. Massachusetts v. Dartmouth House Nursing Home, Inc., 726 F.2d 26 (1st Cir. 1984).

The Ninth Circuit reached the opposite conclusion in *Briney v. Burley* (*In re* Burley), 738 F.2d 981 (9th Cir. 1984), holding that circuit court supervision of the BAP satisfied *Marathon*'s requirement of Article III judicial review. Despite the measures taken by Congress in 1984 through the Bankruptcy Amendments and Federal Judgeship Act to address the *Marathon* decision, the First Circuit Judicial Council chose not to reauthorize its BAP, thus leaving the Ninth Circuit as the only circuit with an operating BAP. This state of affairs changed with the Bankruptcy Reform Act of 1994, which amended the Judicial Code to require the judicial council of each circuit to create a BAP absent a finding by the council that (1) insufficient judicial resources in the circuit would preclude its establishment, or (2) that establishment of a BAP would produce undue delay or increased cost to parties in bankruptcy cases. Pub. L. No. 103-394, § 104(c)(3), 108 Stat. 4106, 4109 (codified at 28 U.S.C. § 158(b)(1)). Prompted into action by this amendment, in 1996 the First Circuit reauthorized and the Second, Sixth, Eighth, and Tenth Circuits established BAPs. The Second Circuit BAP, however, ceased operations on July 1, 2000.

123. Thus, our selection criteria reduced the random sample of documents relating to the first-tier database by approximately 18%.

124. Similar to the first-tier database, see *supra* note 123, our selection criteria reduced the random sample of documents relating to the second-tier database by approximately 17%.

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The distributions of opinions by circuit in each database roughly approximate one another.[125]

As stated before, we do not seek in our study to make claims about the unobserved population of bankruptcy appeals but rather confine our commentary to the observed sample of data we have amassed. That said, we recognize that the story we seek to tell may not be as compelling if selection bias accounts for the results that we present. Accordingly, we seek to alleviate concerns regarding two major types of potential selection bias stemming from litigant choices that could produce a distorted picture: (1) case-selection bias and (2) forum-selection bias.

It has been theorized that cases adjudicated at the trial level represent a nonrandom group by virtue of litigant choices.[126] For a host of reasons, litigants may choose only a select group of cases for which to pursue a final adjudication by a trial court. If tried cases substantively differ from settled cases, a study that focuses solely on tried cases will misrepresent the larger world of litigation because most cases settle.[127] An appeal further exacerbates the selection bias because (1) not all adjudicated cases are appealed and (2) not all appealed cases are disposed of by court decision. The bankruptcy appellate structure doubly compounds the problem given the two levels of intermediate appellate review.

If these assumptions are correct, should they be of overriding concern in a study such as ours? We think not for the following reasons. First, case-selection bias should not impact our citation data insofar as a court is generally constrained to written opinions when it chooses those opinions to which it cites. Second, cases settled either at the trial or at the appellate level are not a relevant population for purposes of our study. Our study asks whether the circuit court will perceive the BAP to have performed the appellate function better than the district court. Because circuit courts are not autonomous decisionmaking bodies and can only resolve those appeals brought before them by the litigants, the only cases that can and should be measured for this purpose are those cases actually appealed to and

125. *See infra* Appendix tbl.1.

126. *See, e.g.*, George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984).

127. According to a recent empirical study, approximately 2% of federal civil lawsuits in 2002 ended in trial. Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 463 tbl.1 (2004). The bankruptcy analogue of a federal civil lawsuit is an adversary proceeding. *See supra* note 45. In 2002, approximately 5% of adversary proceedings terminated during or after trial. Elizabeth Warren, *Vanishing Trials: The New Age of American Law*, 79 AM. BANKR. L.J. 915, 930 (2005).

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resolved by the circuit courts.[128] Last, Professor Frank Cross's comprehensive empirical study of decisionmaking by the courts of appeals has documented that litigant effects are not a major determinant of circuit court decisions, both generally and in particular types of cases (i.e., criminal decisions and labor decisions).[129]

We also recognize that our data potentially include a forum-selection bias because attorneys in circuits that have BAPs may be more likely to prefer appeals relating to certain subject matters to be heard by BAPs than by district courts, or vice versa.[130] Thus, it is possible that there are some issues that BAPs never or only rarely hear. (Assuming that bankruptcy cases are at some level homogenous nationwide, that will not be the case for district courts, because there are circuits in which district courts hear substantially all appeals from bankruptcy court rulings.) More generally, it is possible that BAP and district court dockets vary substantially. While we cannot eliminate this possibility, we have looked for evidence of such a bias and have found no such evidence.[131] Thus, while recognizing that such a bias

128. Even if the group of appeals resolved by the circuit courts are nonrandom such that our results would not hold if the circuit courts also decided those cases that were not appealed beyond the first level of intermediate review, such theorizing is an exercise in futility. Simply put, we cannot measure the outcomes of circuit court decisions that do not exist. In other words, because we look to measure quality of appellate review that the circuit court *perceives*, we ought not to fret about those cases that will never see light of day in the circuit court.

129. CROSS, *supra* note 95, at 123–47.

130. Because the Judicial Code mandates that, in circuits with BAPs, bankruptcy appeals will be heard by the BAP *unless* one of the parties to the appeal elects to have the district court hear the appeal, 28 U.S.C. § 158(c)(1) (2000 & Supp. V 2005), the dynamic of any potential selection bias at work in the BAP perhaps should be understood as the product of the subset of appeals where the forum preferences of the parties to the appeal have aligned. Although there could be instances where all parties prefer to have the appeal heard by the district court, there would also be instances where only one party had such a preference. Thus, a BAP docket is unique in that all of its appeals theoretically involve litigants with a consistent forum preference. We say "theoretically" since it is conceivable that a party with an inconsistent forum preference may have failed, in a timely fashion, to elect a district court to hear the appeal.

131. Because we do not differentiate between district courts from circuits with BAPs (BAP circuits) and those from circuits without BAPs (non-BAP circuits) in our analyses, there is concern that any potential selection bias at work in BAP circuits could be masked by those observations from non-BAP circuits. Approximately 31% of the observations in the first-tier database and 36% of the observations in the second-tier database consisted of district court opinions from non-BAP circuits. *See infra* Appendix tbl.1. We conducted bivariate statistical analyses to ascertain whether selection bias existed in the BAP circuits by focusing on those circumstances in which one would expect to see such bias have a disproportionate effect—namely, (1) the subject matter of the appeal and (2) affirmance rates by the court of appeals. For neither of these circumstances did we find evidence of selection bias.

First, we examined whether a statistically significant relationship exists in BAP circuits between the subject matter of the appeal and the first-tier appellate court to hear the appeal. To do so, we classified observations according to whether the subject of the appeal fell into one of the four most frequently occurring subjects of appeal heard by first-tier appellate courts. For the

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may lurk at more refined levels of case-type delineation, we are at least confident that the size of any forum-selection bias is confined, not pernicious, and thus probably has not had a meaningful effect upon our data and analysis.[132]

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first-tier database, for all observations, and for those observations from BAP circuits, the four most frequently occurring subjects were matters relating to discharge, procedure/jurisdiction, avoiding powers, and multiple subjects. For the second-tier database, for all observations and for those observations from BAP circuits, the four most frequently occurring subjects were matters relating to discharge, claims, avoiding powers, and multiple subjects. For the first-tier database, approximately 56% of the appeals heard by district courts in BAP circuits *as well as* all district courts combined involve one of the four most frequently occurring subjects. For the second-tier database, approximately 64% of the appeals heard by district courts in BAP circuits and 59% of the appeals heard by all district courts combined involve one of the four most frequently occurring subjects. After applying a chi-square test with one degree of freedom, we found no statistically significant relationship in BAP circuits between the subject matter of the appeal and the first-tier appellate court to hear the appeal (a p-value of 0.288 for the first-tier database and a p-value of 0.876 for the second-tier database).

Second, for all observations in the first-tier database, we examine whether a statistically significant relationship exists between the subject matter of the appeal and whether there is a subsequent appeal to the circuit court. Again, we classify observations according to whether the subject of the appeal fell into one of the four most frequently occurring subject matter categories. For those observations involving subsequent appeal to the circuit court, approximately 62% involved a top subject matter category. For those observations without circuit court review, approximately 56% involved a top subject matter category. Applying a chi-square test with one degree of freedom, we found no statistically significant relationship ($p = 0.475$) between the subject matter of the appeal and subsequent appeal to the circuit court.

Finally, we found that courts of appeals affirm district courts in BAP circuits at a rate similar to that of their counterparts in non-BAP circuits. In the first-tier database, there were 77 observations for which there was a subsequent appeal to the court of appeals. The subsequent history for 10 of those observations, however, already existed in the second-tier database (i.e., the circuit court opinion from the second-tier database reviewed an opinion from the first-tier database). When combining the 67 unique observations from the first-tier database involving a subsequent appeal to the court of appeals with the 170 observations in the second-tier database, courts of appeals partly or fully affirmed district courts in BAP circuits approximately 77% of the time and partly or fully affirmed district courts in non-BAP circuits approximately 71% of the time. Bivariate analysis confirms that no statistically significant difference exists between the rate at which courts of appeals partly or fully affirmed district courts from BAP circuits and district courts from non-BAP circuits (chi-squared = 0.9094, df = 1, $p = 0.340$). Furthermore, if one considers only those observations where the court of appeals *fully* affirmed district courts, the affirmance rates in BAP and non-BAP circuits are similar. The circuit court affirmance rate of district court dispositions in BAP circuits was approximately 67% in comparison to 65% in non-BAP circuits. Bivariate analysis confirms that this difference is not statistically significant (chi-squared = 0.1419, df = 1, $p = 0.706$).

132. With respect to citations, if there is a forum-selection bias, then the BAPs are not deciding some categories of cases—and, perhaps, certain issues—that the district courts are. This logically should translate into an increase in citations to district court opinions as compared to BAP opinions, since other courts facing such issues and wishing to include citations will have no opportunity to cite to any BAP opinions. Yet, as we discuss below, our data analyses generally show that BAP citations are favored. In short, if there is a selection bias, then our statistical analyses, if anything, *understate* the extent to which BAP citations are favored.

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2. Variables of Interest

Recall that we sought to test our broad inquiry into the perceived quality of appellate review by focusing on (1) how two distinct appellate courts in the bankruptcy judicial system—the BAPs and district courts—perform their error-finding function and (2) how other judicial actors perceive the quality of that performance. As our hypotheses indicate, we concerned ourselves with an array of dependent variables that fall within one of two categories: (1) affirmance by the court of appeals and (2) citations by other federal courts to the appellate opinions issued by BAPs and district courts. We will discuss each category and the variables associated with each in turn.

First, we tracked the disposition rendered by the BAP or district court on appeal according to three ordered outcomes: (1) "negative" for those dispositions where the reviewing court reversed, remanded, or vacated the disposition rendered below; (2) "hybrid" for those dispositions where the reviewing court partly affirmed the disposition rendered below; and (3) "positive" for those dispositions where the reviewing court fully affirmed the disposition rendered below.[133] We define circuit court affirmance in two ways: broadly and narrowly. Broadly defined, affirmance occurred when the circuit court either partly or fully affirmed the disposition rendered by the first-tier appellate court (i.e., those observations with hybrid or positive outcomes).[134] Narrowly defined, affirmance occurred only when the circuit court fully affirmed the disposition rendered by the first-tier appellate court (i.e., those observations with positive outcomes).[135] Second, in order to document citation data to the opinions in our databases, we relied upon KeyCite, West's citation research service.[136] We documented for each first-tier level opinion all

133. For the frequency of the dispositions rendered on appeal in first-tier and second-tier level opinions, see *infra* Appendix tbl.2.

134. As set forth below, we denominate this variable "Affirmance." *See infra* text accompanying notes 150–151.

135. As set forth below, we denominate this variable "Full Affirmance." *See id.*

136. KeyCite organizes citing references for a case by segregating negative citing references from positive citing references. KeyCite further organizes negative and positive citing references according to the depth of treatment given by the citing reference to the cited opinion. Four categories exist for the depth of treatment provided by the citing reference: (1) "examined," indicating that the citing reference contains an extended discussion of the cited opinion, usually more than a printed page of text; (2) "discussed," indicating that the citing reference contains a substantial discussion of the cited opinion, usually more than a paragraph but less than a printed page; (3) "cited," indicating that the citing reference contains some discussion of the cited opinion, usually less than a paragraph; and (4) "mentioned," indicating that the citing reference

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positive citations made to it by any federal court—aside from those citations made in connection with the direct appellate history of the opinion—during the five-year period following the date that the opinion was issued. Pursuant to these criteria, approximately 75% of the first-tier appellate opinions had citing references. We further documented (1) citations by type of court, (2) citations by depth of treatment, (3) citations directly quoting the cited opinion, and (4) the immediacy with which first-tier appellate opinions were cited.[137]

The major explanatory variables (i.e., independent variables) in the databases include (1) whether the BAP or district court heard the initial appeal, (2) whether the appellant was solely the debtor in whose case the appeal arose, (3) whether the appellee was solely the debtor in whose case the appeal arose, (4) whether the appeal arose in the context of a case filed under Chapter 7 of the Bankruptcy Code, (5) whether the bankruptcy case in which the appeal arose was filed by an individual, (6) whether the type of dispute proceeding within which the appeal arose was an adversary proceeding or contested matter, and (7) the subject matter of the appeal.

B. Bivariate Descriptive Statistics

Our primary interest lies in the statistical relationship between the identity of the first-tier appellate court and various dependent variables: (1) affirmance by the court of appeals, (2) the number of positive federal court citations to the opinion issued by the first-tier appellate court, (3) the depth of treatment given to first-tier appellate opinions when positively cited by other federal courts, (4) direct quotation of the first-tier appellate opinion by positive citing references, and (5) the immediacy with which the first-tier appellate opinion is positively cited. By searching for a statistically significant relationship between the identity of the first-tier appellate court and each of these dependent variables, we can look for those relationships warranting further inquiry through regression analysis that will confirm the existence of the relationship when controlling for other factors.

Hypothesis 1 posits that courts of appeals more likely will uphold the dispositions rendered on appeal by BAPs than those rendered by district courts. Our data support this hypothesis. In the

contains a brief reference to the cited opinion, usually in a string citation. Finally, KeyCite identifies citing references that directly quote the cited opinion.

137. For citation data for those first-tier appellate opinions with positive citing references, see *infra* Appendix tbl.3.

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first-tier database, there were 77 observations for which there was a subsequent appeal to the court of appeals.[138] The subsequent history for 10 of those observations, however, already existed in the second-tier database (i.e., the circuit court opinion from the second-tier database reviewed an opinion from the first-tier database). Combining the 67 unique observations in the first-tier database involving a subsequent appeal to the court of appeals with the 170 observations in the second-tier database, we generated a database of 237 observations for purposes of analyzing circuit court affirmance rates of first-tier appellate dispositions (the "affirmance database"). When defining affirmance broadly to include those dispositions where the circuit court either partly or fully affirmed the first-tier appellate court, the court of appeals affirmed BAPs approximately 91% of the time as opposed to 74% for district courts.[139] If no association had existed between the type of first-tier appellate court to have initially decided the appeal and the disposition rendered on subsequent appeal by the court of appeals, we would have expected to see first-tier appellate dispositions partly or fully affirmed by the court of appeals approximately 78% of the time. Our analysis confirms that there is less than a 0.01 probability that random chance alone would have yielded a difference as large as the one witnessed. Similarly, when defining affirmance narrowly to include only those dispositions where the circuit court fully affirmed the first-tier appellate court, the court of appeals affirmed BAPs approximately 81% of the time as opposed to 66% for district courts.[140] If no association had existed between the

138. Of the 77 observations in the first-tier database for which there was a subsequent appeal to the court of appeals, 50 were district court dispositions and 27 were BAP dispositions. As there were a total of 162 district court and 106 BAP dispositions in the first-tier database, *infra* Appendix tbl.1, approximately 31% of the district court dispositions and 25% of the BAP dispositions involved subsequent appeal. As our first-tier database only includes opinions that disposed of the appeal on the merits, these figures seem to be consistent with empirical evidence that has estimated that up to a third of first-tier appellate dispositions rendered on the merits have been further appealed to the court of appeals. *See* McKenna & Wiggins, *supra* note 65, at 630; *see also* U.S. BANKRUPTCY APPELLATE PANEL FOR THE EIGHTH CIRCUIT, STATISTICAL REPORT: JANUARY 1, 2005 – DECEMBER 31, 2005 (2005), *available at* http://www.ca8.uscourts.gov/newbap/stats/q4-05.pdf (documenting that approximately 30% of bankruptcy appeals in the Eighth Circuit in 2005 were taken to the U.S. Court of Appeals).

139. The 91% circuit court affirmance rate of BAP dispositions approximates the rate at which the U.S. Court of Appeals for the Tenth Circuit partly or fully affirmed merit-based BAP dispositions—that is, 90%—during the eleven-year period beginning on July 1, 1996 and ending on June 30, 2007. *See* U.S. BANKRUPTCY APPELLATE PANEL FOR THE TENTH CIRCUIT, ANNUAL REPORT OF BANKRUPTCY APPEALS IN PARTICIPATING BAP DISTRICTS FOR THE STATISTICAL YEAR JULY 1, 2006 – JUNE 30, 2007 (INCLUDING DISPOSITION STATISTICS FOR APPEALS DISPOSED OF SINCE JULY 1, 1996) 8 (2007), *available at* http://www.bap10.uscourts.gov/stats/2007.pdf.

140. The 81% full affirmance rate of BAP dispositions by circuit courts approximates the rate at which the U.S. Court of Appeals for the Tenth Circuit fully affirmed merit-based BAP

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type of first-tier appellate court and circuit court affirmance, we would have expected to see first-tier appellate dispositions fully affirmed by the court of appeals approximately 70% of the time. Our analysis confirms that there is less than a 0.05 probability that random chance alone would have yielded a difference as large as the one witnessed.[141]

Hypotheses 2 through 7 generally predict that, with the exception of district courts, other federal courts will positively cite to BAP opinions more than they positively cite to district court opinions. For district courts, we hypothesize that they will cite more often to district court opinions than BAP opinions. Finally, we predict that extracircuit citations to BAP opinions will exceed extracircuit citations to district court opinions. As an initial matter, BAP opinions had a higher propensity to be positively cited by other federal courts than district court opinions. Approximately 91% of the BAP opinions in the first-tier database had been positively cited by federal courts, whereas slightly less than two-thirds (65%) of the district court opinions had received similar treatment. In the absence of a relationship between the type of first-tier appellate opinion and positive citation thereto by other federal courts, we would have expected to see approximately three-quarters (75%) of the first-tier appellate opinions positively cited. Our analysis confirms that there is less than a 0.0001 probability that random chance alone would have yielded a difference as large as the one witnessed. It would thus appear that the type of first-tier appellate opinion has some influence on a federal court's decision to cite that opinion.

We can further elaborate on this relationship by examining the number of citing references to the opinions according to the type of federal court making the citing reference. We note that 53% of the observations in the first-tier database that have positive citing references are district court opinions.[142] Assuming a random, or at

dispositions—that is, approximately 89%—during the ten-year period beginning on July 1, 1996, and ending on June 30, 2006. *Id.*

141. For the details of these results, see *infra* Appendix tbl.4.

142. The first-tier database contained 202 observations in which a federal court positively cited to the opinion issued by the first-tier appellate court. In conducting our bivariate analyses, we exclude extreme outliers (i.e., those observations involving extreme values in the tails of the distribution of the positive citing reference data). We define an extreme outlier to be any observation with a total number of positive citations that falls above the third quartile of the positive citing reference data (7 citations) by more than three times the interquartile range for such data (5 citations). *See infra* Appendix tbl.3 (describing distribution of positive citing references to first-tier opinions). Accordingly, we excluded any observations with more than 22 positive citing references. Pursuant to this measure, we eliminated 2 observations from our analysis—both BAP opinions—leaving us with a total of 200 observations for analysis. Accordingly, approximately 99% of the first-tier appellate opinions in our sample that were cited

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least somewhat random, distribution of issues and factual settings, we would expect citation rates to favor district court opinions slightly.[143] Our data, however, generally show that citation rates favor BAP opinions. Specifically, we find strong differences between the BAP and district court samples that are statistically significant at both the mean and the median. For example, a BAP opinion that was positively cited had, on average, approximately 7 citations by other federal courts, whereas a district court opinion averaged approximately 3 citations. Furthermore, by disaggregating our citation data according to the type of federal court that cited the first-tier appellate opinion, we find that the BAP opinions in our study had a statistically significantly greater number of citing references by courts of appeals, BAPs, and bankruptcy courts than did district court opinions. On the other hand, district court opinions had a statistically significantly greater number of citing references by other district courts than did BAP opinions. Finally, the data indicate that extracircuit federal courts cited more to BAP opinions than to district court opinions and that the difference is statistically significant. Some of these results are illustrated below in Figure 2.[144]

positively by other federal courts are included in our bivariate analyses of the citing reference data.

143. *Cf.* Merryman, *Toward a Theory of Citations*, *supra* note 104, at 403 (arguing that the larger number of citations by the California Supreme Court to opinions issued by the courts of New York State may be due to the large case literature arising out of New York).

144. For a full accounting of these results, see *infra* Appendix tbl.5.

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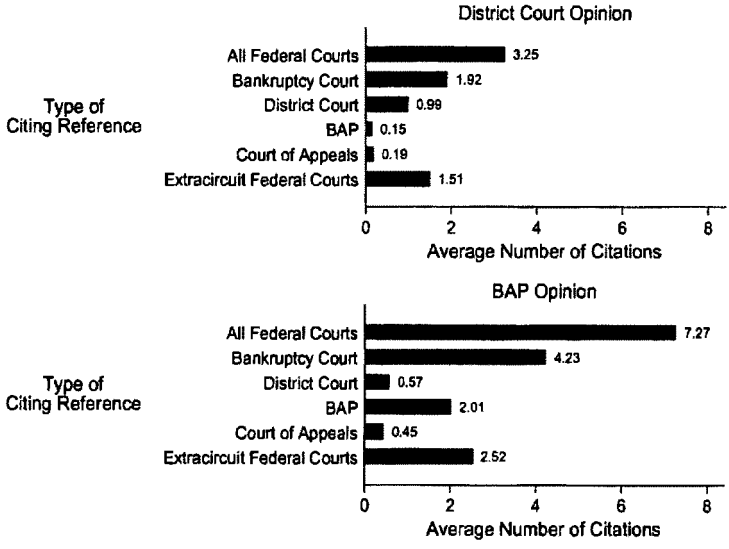
FIGURE 2
AVERAGE NUMBER OF POSITIVE CITING REFERENCES TO
FIRST-TIER APPELLATE OPINION BY CITING REFERENCE TYPE



Additional evidence of the perceived correctness of the first-tier appellate opinions can be gleaned from examining the depth of treatment provided to those opinions by the federal courts that cited to them. Hypothesis 8 predicts that the citing references to BAP opinions will have afforded a greater depth of treatment than district court opinions. Our data generally support this hypothesis. We find that, at both the median and the mean, BAP opinions had a statistically significant higher number of citing references by other federal courts that cited (i.e., provided discussion of less than a paragraph) and discussed (i.e., provided discussion of more than a paragraph but less than a printed page) the opinion.[145] We also find that, at the median, BAP opinions had a statistically significant higher number of citing references by other federal courts that mentioned the opinion (i.e., contained a brief reference to the cited opinion, usually in a string

145. For purposes of this analysis, we once again exclude extreme outliers according to the criteria discussed in *supra* note 142.

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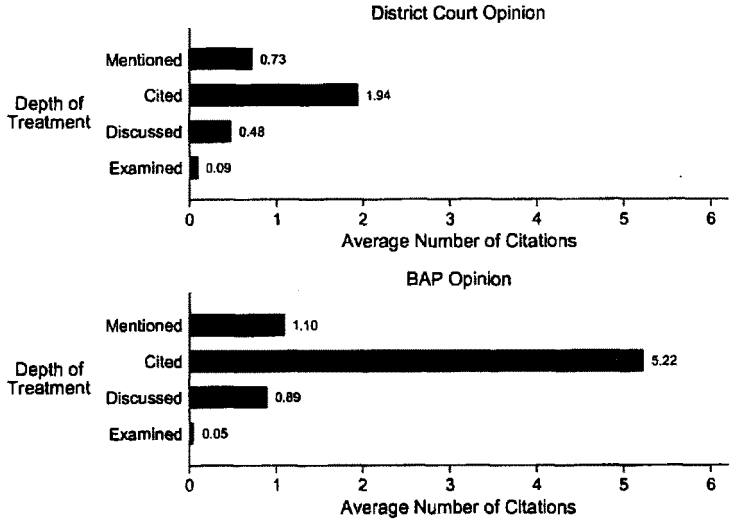
citation). We do not find, however, either at the median or the mean, any association between the type of first-tier appellate opinion and the number of positive citing references that examine the opinion (i.e., contain an extended discussion of the cited opinion usually more than a printed page of text). Figure 3 illustrates some of these results.[146]

FIGURE 3
AVERAGE NUMBER OF POSITIVE CITING REFERENCES TO FIRST-TIER APPELLATE OPINION BY DEPTH OF TREATMENT



We tracked the number of citing references that directly quoted the first-tier appellate opinion as yet another metric for evaluating the perceived correctness of the first-tier appellate opinions in our study. First, we find evidence to support our hypothesis that a greater likelihood exists that positive federal citing references will have quoted BAP opinions as opposed to district court opinions. Approximately 65% of the federal courts that positively cited BAP opinions also directly quoted those opinions, whereas only 38% of district court opinions with positive federal citing references were directly quoted. If no relationship existed between the type of first-tier

146. For a full accounting of these results, see *infra* Appendix tbl.5.

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appellate opinion and positive direct quotation thereto by other federal courts, we would have expected to see slightly more than half (51%) of the first-tier appellate opinions to have been quoted directly. Our analysis confirms that there is less than a 0.0001 probability that random chance alone would have yielded a difference as large as this, thus indicating a statistically significant association between the type of first-tier appellate opinion and a federal court's decision to quote the opinion directly when positively citing to it. Furthermore, we observe that, on average, approximately 1.5 of the positive citing references to BAP opinions directly quote such opinions as opposed to only 0.58 of the positive citing references to district court opinions. Also, whereas 65% of the positively cited BAP opinions have at least one directly quoting citing reference, only 39% of the positively cited district court opinions did so. These differences are highly statistically significant and further support our contention that positive federal citing references will have directly quoted BAP opinions more frequently than district court opinions.[147]

Finally, the immediacy with which a federal court cites to such an opinion serves as yet another indicator of its perceived quality. Accordingly, we consider the period of time for which it took a first-tier appellate opinion to be positively cited by a federal court for the first time.[148] Our data show that, for the group of positively cited first-tier appellate opinions, a BAP opinion would receive its first positive citing reference by another federal court, on average, within approximately 10 months (306 days), while it took nearly twice as long—approximately 17 months (533 days)—for a district court opinion. Moreover, slightly more than half (51%) of the BAP opinions from this group received their first positive citation within approximately a 6-month period. This starkly contrasts with district court opinions, only about a quarter (24%) of which received their first positive citation within the same period of time. These highly statistically significant differences indicate that the type of first-tier appellate opinion has

147. For purposes of these analyses, we excluded extreme outliers according to the criteria discussed in *supra* note 142. For a full accounting of these results, see *infra* Appendix tbl.5.

148. We might assume that an opinion that comprehensively and effectively addresses an unresolved or debated issue of law that has been repeatedly litigated not only will be heavily cited, but also will be cited more quickly. Thus, for purposes of this analysis, we exclude the extreme outliers we identified with respect to total number of positive citing references. *See supra* note 142. We further sought to identify whether there were any extreme outliers in terms of the number of days it took for the first-tier appellate opinions to be cited. In this instance, we define an extreme outlier to be any observation with a total number of days that falls above the third quartile of the immediacy data (638 days) by more than 3 times the interquartile range for such data (520.5 days). On the basis of these parameters, there were no additional extreme outliers.

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some association with the time within which the opinion will garner its first positive citation by another federal court.[149]

In summary, based on the affirmance rates of courts of appeals on subsequent review of BAP and district court opinions, we find that courts of appeals perceive BAPs to provide a better quality of appellate review than district courts. Moreover, based on citations to the opinions issued by BAPs and district courts, we find strong evidence that most nonreviewing federal courts perceive the quality of BAP opinions to be better. We now look to confirm whether these associations will persist when controlling for other potential explanatory variables and, if so, we attempt to measure the strength of such associations.

C. Regression Analyses

Here, we seek to provide a more comprehensive analysis of the perceived quality of appellate review by constructing a series of regression models that will test whether the statistically significant relationships we identified in Part III.B persist when controlling for the independent variables discussed in Part III.A.

1. Circuit Court Affirmance

For the 237 observations in the affirmance database,[150] we used a logistic regression model to predict the binary dependent variable of circuit court affirmance (no affirmance coded 0 and affirmance coded 1), both broadly and narrowly defined (respectively, Affirmance and Full Affirmance),[151] based on the following independent variables:

whether the first-tier appellate court was a district court (coded 0) or a BAP (coded 1) (Court);

whether the appeal arose within the context of an adversary proceeding (coded 0) or a contested matter (coded 1) (Dispute Type);

the fiscal year in which the first-tier appellate court issued its opinion (for which we created three indicator variables with the response categories 0 for those opinions issued outside of the

149. For a full accounting of these results, see *infra* Appendix tbl.5.

150. *See supra* Part III.A.2.

151. *See supra* text accompanying notes 134–135.

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fiscal year in question and 1 for those opinions issued during the fiscal year in question) (Fiscal Year);[152]

whether the first-tier appellate court had published its disposition (negative responses coded 0 and positive responses coded 1) (Published);

whether the only party to appeal to the first-tier level court was the debtor (negative responses coded 0 and positive responses coded 1) (Appellant);

whether the debtor was the only party appearing as an appellee at the first-tier level of review (negative responses coded 0 and positive responses coded 1) (Appellee);

whether the appeal arose in the context of a Chapter 7 case (negative responses coded 0 and positive responses coded 1) (Chapter 7);

whether the bankruptcy case in which the appeal arose was that of an individual debtor (negative responses coded 0 and positive responses coded 1) (Debtor Type); and

whether the subject of the appeal could be classified as falling into one of the four most frequently occurring subjects of appeal heard by first-tier appellate courts for which there was subsequent appeal to the court of appeals (negative responses coded 0 and positive responses coded 1) (Subject).[153]

According to the model, even when controlling for other potential explanatory variables, the type of first-tier appellate court to have initially determined the appeal remains a statistically significant predictor of Affirmance and Full Affirmance by the court of appeals.[154] The model indicates that the shift from the district court to the BAP as the first-tier appellate court made the odds of Affirmance 3.95 [1.41, 11.07] times higher and the odds of Full Affirmance 2.54 [1.12,

152. The opinions in the database were issued during one of three government fiscal years—1998, 1999, or 2000. *See supra* note 122 and accompanying text. The reference category was first-tier opinions issued during the 2000 fiscal year and was accordingly excluded from the model.

153. The four most frequently occurring subjects were matters relating to discharge (24%), multiple subjects (17%), avoiding powers (10%), and procedure/jurisdiction (9%).

154. Both the Court and Published variables are significant predictors of Affirmance and Full Affirmance. The Appellant, Appellee, and Subject variables are significant predictors of Full Affirmance (but not Affirmance). For detailed results from this regression model, see *infra* Appendix tbl.6.

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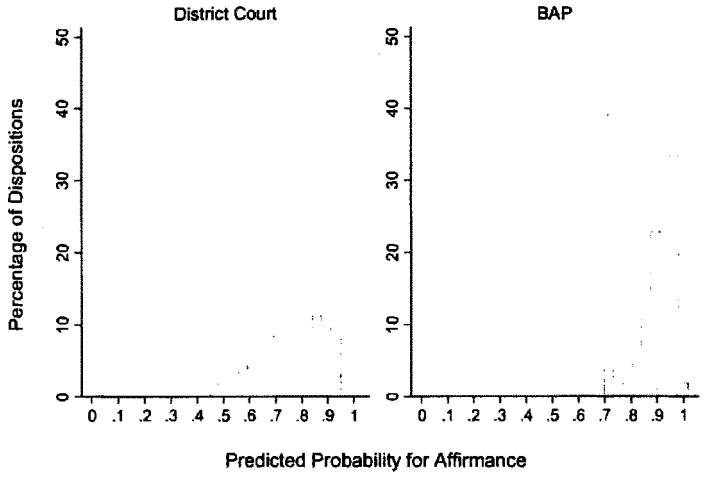
5.74] times higher.[155] Put another way, holding all other variables constant, a first-tier appellate disposition rendered by a BAP increased the odds of Affirmance by 295% [41, 1007] and Full Affirmance by 154% [12, 474].

It is helpful to elucidate these findings in terms of predicted probabilities. Using the actual values of all of the independent variables included in the model, we can calculate the predicted probability of circuit court affirmance for the 237 first-tier appellate dispositions upon which the model is based. In Figures 4 and 5 below, we present the predicted probabilities for Affirmance and Full Affirmance, respectively, of the actual observations in our regression model through use of a histogram that displays the distribution of those probabilities for district court dispositions and BAP dispositions separately. The width of each bar represents a specific interval of predicted probability of affirmance, and the height of each bar represents the percentage of dispositions that fall within that interval. For any observation with a predicted probability of over 50% (i.e., greater than 0.5), the model assigned the positive outcome of circuit court affirmance.

155. When performing inference, we implement the recommended practice of conveying levels of uncertainty by using the notation [#, #] to indicate the lower and upper bounds of the 95% confidence interval around our estimates. *See* Lee Epstein, Andrew D. Martin & Matthew M. Schneider, *On the Effective Communication of the Results of Empirical Studies, Part I*, 59 VAND. L. REV. 1811, 1835–37 (2006).

FIGURE 4
PREDICTED PROBABILITIES FOR AFFIRMANCE



Source: Affirmance Database

First, we find that, when holding other variables at their mean, a BAP disposition is predicted to have a 93% [86, 99] chance of being either partly or fully affirmed by the court of appeals in contrast to 77% [70, 84] for district court dispositions. Thus, when holding other variables at their mean, the likelihood of partial or full affirmance by the court of appeals is predicted to increase by 16 [7, 25] percentage points when it reviews BAP dispositions. Second, we find that, when holding other variables at their mean, a BAP disposition is predicted to have an 85% [76, 95] chance of being fully affirmed by the court of appeals in contrast to 69% [62, 77] for district court dispositions. Thus, when holding other variables at their mean, the likelihood of full affirmance by the court of appeals is similarly predicted to increase by 16 [4, 28] percentage points when it reviews BAP dispositions. These findings support our hypothesis that courts of appeals will more likely uphold the dispositions rendered by BAPs than those rendered by district courts.

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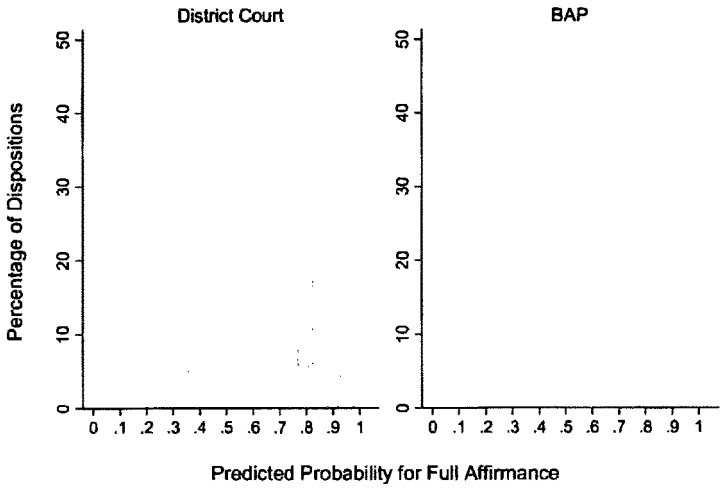
FIGURE 5
PREDICTED PROBABILITIES FOR FULL AFFIRMANCE



Source: Affirmance Database

2. Positive Citing References by Other Federal Courts

To further explore (1) the decision of federal courts to cite positively to the opinions issued by first-tier appellate courts, (2) the extent to which they do so, (3) the manner in which they do so, and (4) the immediacy with which they do so, we construct a series of binary logistic regression models as well as various count regression models (e.g., negative binomial and Poisson). First, we examine whether the association between the identity of the first-tier appellate court and positive citation to its opinion persists when controlling for other factors. For all 286 observations in the first-tier database, we use a binary logistic regression model to predict whether a federal court will have cited positively to the first-tier appellate opinion (coding opinions with no positive citations as 0 and coding opinions with at least one positive citation as 1) based on the following independent variables: (1) Court; (2) whether the first-tier appellate court fully affirmed the disposition rendered by the bankruptcy court (negative responses

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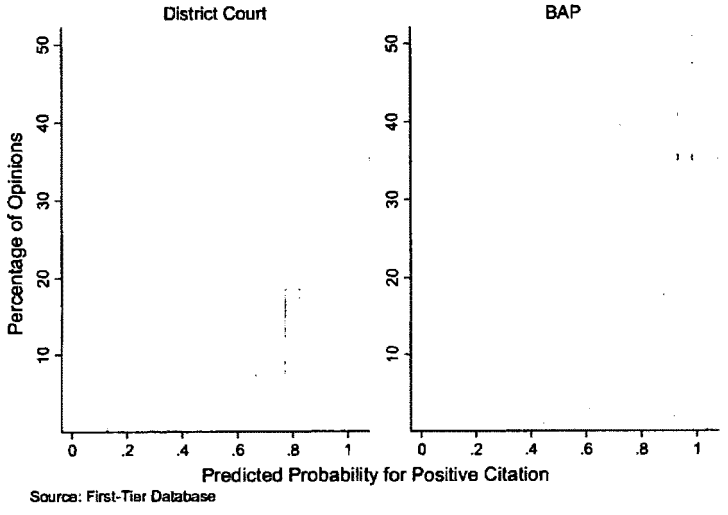
coded 0 and positive responses coded 1) (First-Tier Full Affirmance); (3) Published; (4) Appellant; (5) Appellee; (6) Chapter 7; (7) Debtor Type; (8) Dispute Type; (9) Subject; (10) whether the first-tier court's disposition was subsequently appealed to the court of appeals (negative responses coded 0 and positive responses coded 1) (Subsequent Appeal); and (11) Fiscal Year.

The model identifies the type of first-tier appellate court to have initially determined the appeal as a statistically significant predictor of whether the court's opinion will have been positively cited by another federal court.[156] Figure 6 below illustrates the predicted probability of positive citation to the first-tier appellate opinion based on the actual values of all of the independent variables included in the model.

FIGURE 6
PREDICTED PROBABILITIES FOR POSITIVE CITATION OF FIRST-TIER APPELLATE OPINIONS BY FEDERAL COURTS



156. For detailed results from this regression model, see *infra* Appendix tbl.7.

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We find that, when holding other variables at their mean, a BAP opinion is predicted to have a 90% [84, 97] chance of being positively cited by another federal court in contrast to 73% [65, 81] for district court opinions. Accordingly, when holding other variables at their mean, the likelihood of positive citation to a first-tier appellate opinion by another federal court is predicted to increase by 17 [7, 27] percentage points for BAP opinions. These data support our hypothesis that, if a BAP issued the first-tier appellate opinion, it will increase the chances of the opinion being positively cited by other federal courts.[157]

The question arises whether this association persists when analyzing the extent to which other federal courts cite to first-tier appellate opinions, whether analyzing citations in the aggregate (i.e., total number of positive citations) or disaggregated according to the type of citing federal court. To answer the question, we implement a variety of count regression models that analyze the 200 observations in the first-tier database where a federal court positively cited to the opinion issued by the BAP or district court.[158] First, in order to predict the aggregate number of positive citations, we conduct a zero-truncated negative binomial regression analysis.[159] We then proceed to analyze the number of positive citations by citing court type pursuant to a negative binomial regression model (with one exception).[160] For both of these models, we incorporate the same independent variables from the binary logistic regression model used to predict whether the first-tier appellate opinion would be cited. Figures 7 and 8 compare (1) the observed probabilities for each value of the number of positive citations to the first-tier appellate opinions from the first-tier database with (2) the average predicted probabilities of observing those specific

157. The model also identifies the Published, Dispute, and Subject variables as significant predictors of whether the first-tier appellate opinion will have been cited by other federal courts.

158. There were actually 202 such observations. For purposes of our regression analyses, however, we eliminated 2 extreme outliers, which left 200 observations to be analyzed. *See supra* note 142.

159. A zero-truncated negative binomial regression model is appropriate here since (1) the aggregate number of positive citations is a count variable that is overdispersed, and (2) there are no zero values for this subset of observations (i.e., all opinions have at least one positive citing reference).

160. We ran the regression model four times to account for four different types of citing federal courts (i.e., bankruptcy court, district court, BAP, and extracircuit federal courts). In order to predict the number of citing references by courts of appeals, however, we used a Poisson regression model. When fitting a negative binomial regression model, the likelihood ratio test for alpha—the overdispersion parameter—was not significant (chi-squared = 2.52, df = 1, $p = 0.056$), thus indicating that the Poisson model is preferred. We do not use a zero-truncated model for any of these dependent variables since some of the observations do have zero values.

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counts based on the actual values of all of the independent variables included in the fitted models.

The models indicate that a statistically significant relationship exists between the type of first-tier appellate court that issued the opinion and the total number of positive citing references as well as positive citing references by bankruptcy courts, BAPs, district courts, courts of appeals, and extracircuit federal courts. A BAP opinion increased the expected number of total positive citations over a five-year period by approximately 154% [84, 251], holding all other variables constant. If we focus on the type of citing federal court, holding all other variables at their mean, BAP opinions are predicted to receive approximately (1) 2.0 [1.1, 3.0] more bankruptcy court citations; (2) 1.3 [0.8, 1.7] more BAP citations; (3) 0.2 [0.1, 0.3] more court of appeals citations; and (4) 0.6 [0.04, 1.2] more citations by extracircuit federal courts.

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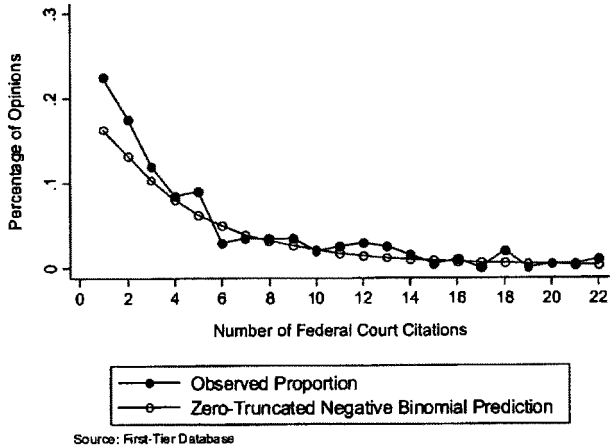
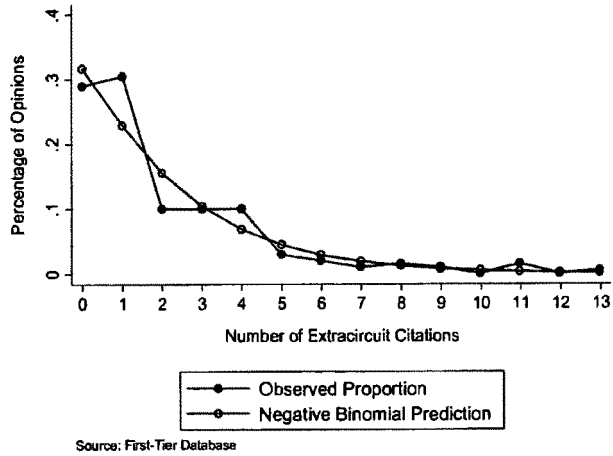
FIGURE 7
COMPARISON OF OBSERVED AND PREDICTED COUNTS OF
POSITIVE CITATION TO FIRST-TIER APPELLATE OPINIONS
BY ALL FEDERAL COURTS AND EXTRACIRCUIT FEDERAL COURTS



Source: First-Tier Database



Source: First-Tier Database

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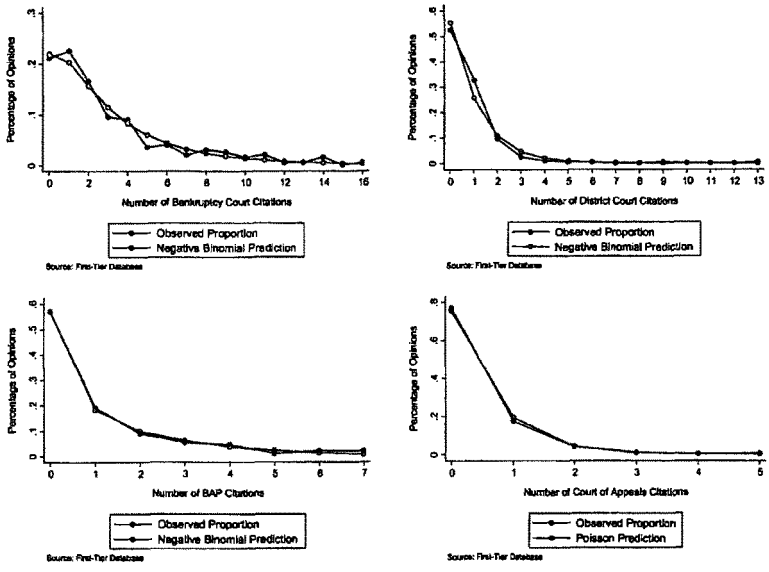
FIGURE 8
COMPARISON OF OBSERVED AND PREDICTED COUNTS OF POSITIVE CITATION TO FIRST-TIER APPELLATE OPINIONS BY TYPE OF CITING FEDERAL COURT



These results support Hypotheses 2B, 3, 4, 5, and 7. We also find that, holding all other variables at their mean, district court opinions are predicted to receive approximately 0.34 [0.03, 0.65] more district court citations than BAP opinions, thus confirming the distinction we drew in Hypothesis 6.[161] Overall, the bulk of our evidence suggests that other actors within the bankruptcy judicial system perceived BAPs to provide a better quality of appellate review than district courts.[162]

161. To predict the total number of positive district court citations to first-tier appellate opinions, we initially fitted a negative binomial regression model that included all of the independent variables in the negative binomial regression model used for the other types of citations (the full model). Although the Court variable was a statistically significant predictor in the full model, the model as a whole was not statistically significant (chi-squared = 19.21, df = 12, $p = 0.0836$). Accordingly, using a backward-selection stepwise regression, we fitted a partial model that only included the Court, Debtor, Subject, and Fiscal Year variables. This partial model was statistically significant (chi-squared = 16.70, df = 5, $p = 0.0051$), and the Court variable continued to be a statistically significant predictor ($p = 0.032$).

162. For detailed results from these regression models, see *infra* Appendix tbl.8.

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Using the same negative binomial regression model we used to predict the extent to which federal courts would cite to the first-tier appellate opinions, we find limited results for whether the type of first-tier appellate opinion will be a statistically significant predictor of the depth of treatment provided to the opinion by the citing federal court when controlling for other factors.[163] Again, when holding all other variables at their mean, we find that BAP opinions are predicted to have a statistically significant higher number of citing references by other federal courts that (1) provided discussion of less than a paragraph but more than a brief reference to the cited opinion—approximately 2.96 [1.99, 3.92] more citing references of this type—and (2) provided discussion of more than a paragraph but less than a printed page of the opinion—approximately 0.39 [0.09, 0.68] more citing references of this type.[164] On the other hand, we find no statistically significant relationship between the type of first-tier appellate court that issued the opinion and the number of citing references that either mentioned the opinion (i.e., contained a brief reference to the cited opinion, usually in a string citation) or examined the opinion (i.e., contained an extended discussion of the cited opinion usually more than a printed page of text).[165]

Including the same observations and independent variables from the regression models we used to predict the extent of citation and depth of treatment by citing references, we predict through binary logistic regression the tendency of first-tier appellate opinions to be directly quoted by federal courts that positively cite to those opinions. We find that, when holding other variables at their mean, a BAP opinion is predicted to have a 64% [53, 75] chance of being directly

163. In one instance, we do not use a negative binomial regression model. In order to predict the number of citing references that examined the first-tier appellate opinion (i.e., an opinion that contains an extended discussion of the cited opinion usually more than a printed page of text), we used a Poisson regression model since the values for this dependent variable were not overdispersed. When using a negative binomial model, the likelihood ratio test for alpha—the overdispersion parameter—was not significant (chi-squared = 0.0019, df = 1, p = 0.483), thus indicating that the Poisson model is preferred.

164. To predict the total number of positive citations that provided discussion of more than a paragraph but less than a printed page of the opinion, we initially fitted a negative binomial regression model that included all of the independent variables included in the negative binomial regression model used for the other types of citations (the full model). Although the Court variable was a statistically significant predictor in the full model, the model as a whole was not statistically significant (chi-squared = 15.41, df = 12, p = 0.2200). Accordingly, using a backward-selection stepwise regression, we fitted a partial model that only included the Court and Subject variables. This partial model was statistically significant (chi-squared = 9.67, df = 2, p = 0.0080), and the Court variable continued to be a statistically significant predictor (p = 0.008).

165. For detailed results from this regression model, see *infra* Appendix tbl.9.

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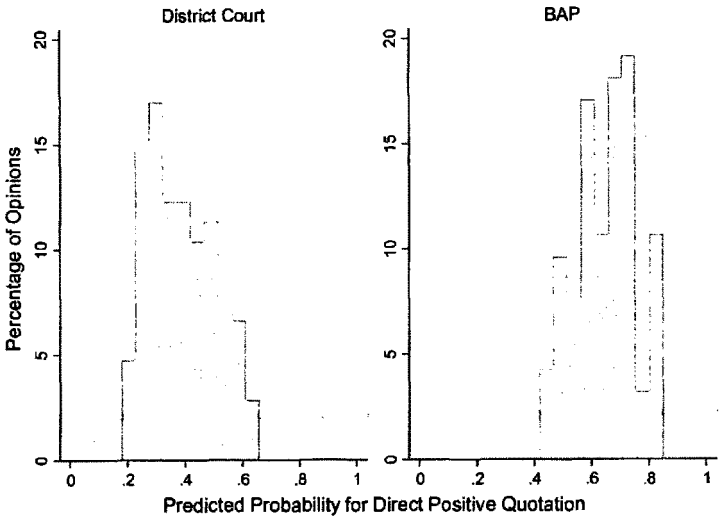
quoted in contrast to 40% [29, 50] for a district court opinion.[166] Thus, when holding other variables at their mean, the likelihood of direct quotation of a first-tier appellate opinion by a citing federal court is predicted to increase by 25 [9, 40] percentage points when the court cites to a BAP opinion. We present the distribution of predicted probabilities for direct quotation (based on the actual values of all of the independent variables included in the model) in Figure 9 below.

FIGURE 9
PREDICTED PROBABILITIES FOR DIRECT QUOTATION OF
FIRST-TIER APPELLATE OPINIONS BY CITING FEDERAL COURTS



Moreover, if we look to the extent of direct quotation of first-tier appellate opinions, a negative binomial regression model indicates that a statistically significant relationship exists between the type of first-tier appellate court to have issued the opinion and the extent to

166. None of the other independent variables was a statistically significant predictor of direct quotation of the first-tier appellate opinion by its citing reference. For detailed results from this regression model, see *infra* Appendix tbl.11.

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which other federal courts directly quoted the opinion.[167] Specifically, we find that, holding all other variables at their mean, a BAP opinion is predicted to have approximately 0.75 [0.35, 1.16] more citing references that directly quote it than a district court opinion.[168] These findings support Hypotheses 9A and 9B.

Finally, we find support for Hypothesis 10, even when controlling for other factors. A zero-truncated negative binomial regression model indicates that the type of first-tier appellate court to have issued the opinion influenced the immediacy with which it was cited. A BAP opinion is predicted to decrease the expected number of days before a federal court first cites positively to a first-tier appellate opinion by approximately 44% [25, 58], holding all other variables constant. It would seem, therefore, that BAP opinions command the attention of other federal courts more quickly than district court opinions.[169]

D. Interpretation of Results

Our inquiry into the perceived quality of appellate review has focused on two types of perception: (1) the manner in which courts of appeals, upon direct review, have perceived BAPs and district courts to perform their error-finding function; and (2) the manner in which other federal courts have signaled, through citation practices, their perception of the quality of appellate review provided by BAPs and district courts. We conducted our inquiry by testing a series of hypotheses predicting that BAPs, by virtue of their structural features, would be perceived to provide a quality of appellate review superior to that of their district court counterparts. In the end, our statistical analyses generate considerable evidence in support of our hypotheses. We repeatedly find a statistically significant, positive association between BAPs and various measures for the perception of the quality of appellate review. However, as statistical significance does not necessarily translate into substantive significance, we seek to give a richer account of the different ways in which our results buttress our claims.

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167. The model incorporates the same independent variables and observations from the binary logistic regression model used to predict the tendency for direct quotation of first-tier appellate opinions.

168. No statistically significant relationship existed between any of the other independent variables and the number of citations that directly quoted the first-tier appellate opinion. For detailed results from this regression model, see *infra* Appendix tbl.9.

169. For detailed results from this regression model, see *infra* Appendix tbl.10.

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First, consider our findings that, even when holding other variables at their mean, the likelihood of some affirmance (whether in part or in full) by the court of appeals is predicted to increase from 77% for district courts to 93% for BAPs, and that the likelihood of full affirmance by the court of appeals is predicted to increase from 69% for district courts to 85% for BAPs.[170] Given that affirmance deference has been documented to be a major determinant of circuit court outcomes,[171] the statistically significant difference in affirmance rates takes on added significance. While legal procedural requirements generally require a court of appeals to accord deference to a lower court's findings of fact, the legal standard most often applicable to a lower court's conclusions of law—de novo review—calls for no such deference. If courts of appeals affirm BAPs at a statistically significant greater rate than district courts, notwithstanding the affirmance bias created by legal review standards, our results suggest that the circuit courts perceive the BAP to perform its error-finding function better than the district court.[172]

Second, consider our statistically significant findings that BAP opinions received higher numbers of positive citations by other federal

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170. *See supra* Part III.C.1.

171. *See* CROSS, *supra* note 95, at 39–68.

172. A study conducted by the Federal Judicial Center found that courts of appeals fully affirmed the judgments of district courts in bankruptcy appeals approximately 73% of the time, and the study further estimated that the affirmance rates for BAP judgments would be similar. *See* McKenna & Wiggins, *supra* note 65, at 630. We conclude that our statistically significant evidence contravenes the prior understanding of outcomes in the bankruptcy appeals system.

In response to the account we have provided regarding circuit court affirmance, one might argue that courts of appeals simply prefer to reduce their workload and that they accordingly tend to defer to BAPs (even if the legal standard calls for more exacting review). Assuming, however, that the predilection toward leisure does not outweigh the desire of courts of appeals to resolve appeals correctly, then one must assume that, to the extent that courts of appeals affirm—and, on this story, defer to—BAPs more than district courts, they do so because they believe that BAPs are structurally more likely to resolve the issues correctly than are district courts. It is true that, to the extent that the courts of appeals simply defer to BAPs to a greater extent on principle (i.e., with less review of how the BAPs actually resolve particular cases), we cannot say whether the affirmance rate measures actual quality of appellate review. Even on this story, however, the affirmance rate does measure the perceived quality of appellate review.

One also might argue that courts of appeals in BAP circuits are heavily invested in the success of the BAPs given that the judicial councils in those circuits have decided to establish BAPs in the first instance, *see* 28 U.S.C. § 158(b)(1) (2000) (setting forth procedures for establishing a BAP), and given that the judicial councils have also selected the bankruptcy judges who will serve on the BAPs, *see id.* § 158(b)(3) (setting forth procedures for selecting BAP judges). The desire to legitimate the BAP as an institution, in other words, may motivate the greater tendency of courts of appeals to affirm BAPs. Insofar as review by a court of appeals is transparent, however, it is unlikely that the court would simply affirm BAP judgments and reasoning that were obviously wrong. Put another way, it seems unlikely that the desire of a court of appeals to legitimate a BAP would entirely outweigh the desire to resolve appeals correctly.

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courts, BAP opinions were cited in greater depth, and BAP opinions were cited with greater immediacy. We noted above that citations rates are most relevant and most informative in the absence of a stare decisis obligation.[173] Accordingly, we find that our results regarding the citation practices of courts of appeals and extracircuit federal courts merit particular attention.

At first blush, one might not consider substantively significant our statistically significant finding that, when holding other variables at their mean, BAP opinions are predicted to receive approximately 0.2 more citations by courts of appeals. Placed in its proper context, however, this finding takes on new light. As an initial matter, courts of appeals were incredibly parsimonious in their citing of first-tier appellate opinions. Specifically, 82% of the first-tier appellate opinions did not receive *any* circuit court citations, thus making any amount of citation by the courts of appeals impressive. Furthermore, we estimate pursuant to our regression analysis that the rate of citation over a five-year period to BAP opinions by courts of appeals is 2.33 [1.30, 4.21] times greater than for district court opinions.[174] These findings confirm anecdotal evidence reported by the Federal Judicial Center that circuit judges perceive BAP opinions to be of a higher quality than district court opinions.[175] Thus, although the size of the statistically significant effect we witness with respect to circuit court citations appears small, we interpret it to have substantive significance. Finally, we uncovered statistically significant evidence to support our hypothesis that extracircuit federal courts would positively cite with greater frequency to BAP opinions—specifically, a rate predicted to be 1.45 [1.03, 2.03] times greater than that for district court opinions.[176] In light of "the dearth of binding precedent [on questions of substantive bankruptcy law] from the courts of appeals or the Supreme Court,"[177] one might interpret the extracircuit favoritism of BAP opinions over district court opinions as the next-best source of authority.

When we consider these findings in concert with the rest of our findings on citation practices, we conclude that there exists strong support for the notion that, in a variety of ways, other judicial actors

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173. *See supra* notes 106–107 and accompanying text.

174. *See infra* Appendix tbl.8.

175. *See* McKenna & Wiggins, *supra* note 65, at 678 ("There is anecdotal evidence that circuit judges find the BAP decisions they review better reasoned and the cases better prepared for review than decisions from the district courts, *and that this impression is independent of the likelihood of affirmance or reversal*." (emphasis added)).

176. *See infra* Appendix tbl.8.

177. *See* McKenna & Wiggins, *supra* note 65, at 628.

in the bankruptcy appeals process perceive BAPs to provide a better quality of appellate review than district courts. These conclusions provide strong validation to commentators who have theorized about the ideal attributes of appellate review. To the extent that courts in fact strive to resolve cases correctly, the findings suggest that BAPs in fact offer higher quality appellate review than do district courts. That conclusion, in turn, has important ramifications for policymakers. It would seem desirable for policymakers to introduce more multimember appellate tribunals staffed by judges with particular expertise in the subject matter of the appeals.[178]

It is important to emphasize again that those conclusions clearly result only if courts in fact strive to reach correct resolution of cases and issues. That is a question on which our data do not and cannot shed light. It may be the case that, partly as a result of theoreticians' writings, courts favor BAPs over district courts not because they truly conclude that BAPs are correct more often, but rather because they simply *believe* (without truly examining) that BAPs are correct, which in turn inclines them simply to affirm the conclusions of BAPs. If so, the lesson for policymakers is murkier.

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178. *See, e.g., id.* at 634:

> [U]sers of the complex bankruptcy system probably want precedent not just settled, but settled right . . . . If early (and in the Ninth Circuit, not so early) impressions about the quality of work by the bankruptcy appellate panels hold up, the dual needs for binding authority and substantive correctness . . . argue for some sort of a dual or hybrid system involving bankruptcy appellate panels in some form.

The benefits of establishing such tribunals may impose various costs, although they may be minimized depending on the manner in which such tribunals are integrated within existing judicial operations. *See, e.g., id.* at 629; *Bankruptcy Appeals, Lawyers Wary of New System Begun This Month*, N.Y.L.J., July 11, 1996, at 5 ("Steven Flanders, the Second Circuit Executive, though, while noting that the BAPs represent a 'major institutional change' for the circuit, believes the costs will be manageable. Mr. Flanders indicated that the calendaring of appeals will be integrated into the circuit clerk's office . . . ."). From the perspective of litigants, a cost of particular concern would be that of disposition time. In the bankruptcy appeals context, however, preliminary evidence tentatively suggests that BAPs appear to have reduced such costs. A study by the Federal Judicial Center reported that, "[i]n most circuits, the overall mean and median disposition times for BAPs are lower than the national figure for bankruptcy appeals to the district courts, but in most circuits they are based on a rather small number of cases, which limits the conclusions to be drawn from the figures." McKenna & Wiggins, *supra* note 65, at 661.

We emphasize that our findings do not speak to whether it is more desirable to have many such tribunals—as is the case with BAPs—or just one national tribunal—as is the case, for example, with the United States Court of Appeals for the Federal Circuit for patent appeals. That issue would seem to turn largely on the importance of having an intermediate appellate tribunal announce legal rules with national uniformity. *See, e.g., id.* at 649.

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CONCLUSION

In this Article, we have shown that, in different ways, federal courts have expressed a general preference for the quality of appellate review afforded by BAPs as opposed to district courts. On the hardly implausible assumption that courts in fact strive to resolve cases and issues correctly, this finding tends to validate theoreticians' claims about the ideal attributes of appellate review, because BAPs, more so than district courts, tend to feature those attributes. Upon the same assumption, this finding also should prompt policymakers to introduce more appellate tribunals with these attributes—specifically, multimember panels whose members enjoy an expertise in the types of matters likely to fill up the docket of the tribunals.

We believe that future research in the area will offer even more insights. We intend to continue our exploration by refining our consideration of issues that come before courts. Perhaps, for example, some issues lend themselves more to solution by expert panels than do others. We also hope to consider the effect of competition between appellate tribunals, such as the one that exists between BAPs and district courts in the bankruptcy appeals context.

APPENDIX

Table 1: Sample of Appellate Bankruptcy Opinions

Panel A: District Court and Bankruptcy Appellate Panel (BAP) Opinions by Fiscal Year

Fiscal Year	*District Court Opinions*	*Column Percentage*	*BAP Opinions*	*Column Percentage*
1998	56	34.57	34	32.08
1999	53	32.72	44	41.51
2000	53	32.72	28	26.42
Total	162	100.00	106	100.00

Source: First-Tier Database
Note: Column percentages may not total 100% due to rounding.

Panel B: District Court and Bankruptcy Appellate Opinions by Circuit

Circuit	*District Court*	*Column Percentage*	*BAP*	*Column Percentage*	*Total*	*Column Percentage*
First	7	4.32	10	9.43	17	6.34
Second	32	19.75	5	4.72	37	13.81
Third	26	16.05	0	0.00	26	9.70
Fourth	9	5.56	0	0.00	9	3.36
Fifth	14	8.64	0	0.00	14	5.22
Sixth	16	9.88	11	10.38	27	10.07
Seventh	23	14.20	0	0.00	23	8.58
Eighth	2	1.23	22	20.75	24	8.96
Ninth	14	8.64	31	29.25	45	16.79
Tenth	7	4.32	27	25.47	34	12.69
Eleventh	12	7.41	0	0.00	12	4.48
District of Columbia	0	0.00	0	0.00	0	0.00
Total	162	100.0	106	100.00	268	100.00

Source: First-Tier Database
Note: Column percentages may not total 100% due to rounding.

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Panel C: Court of Appeals Opinions by Fiscal Year and First-Tier Court Reviewed

Fiscal Year	*Reviewing District Court*	*Column Percentage*	*Reviewing BAP*	*Column Percentage*
1998	42	30.66	13	39.39
1999	44	32.12	9	27.27
2000	51	37.23	11	33.33
Total	137	100.00	33	100.00

Source: Second-Tier Database
Note: Column percentages may not total 100% due to rounding.

Panel D: Court of Appeals Opinions by Circuit and First-Tier Court Reviewed

Circuit	*District Court*	*Column Percentage*	*BAP*	*Column Percentage*	*Total*	*Column Percentage*
First	3	2.19	3	9.09	6	3.53
Second	14	10.22	2	6.06	16	9.41
Third	7	5.11	0	0.00	7	4.12
Fourth	8	5.84	0	0.00	8	4.71
Fifth	23	16.79	0	0.00	23	13.53
Sixth	15	10.95	2	6.06	17	10.00
Seventh	16	11.68	0	0.00	16	9.41
Eighth	10	7.30	2	6.06	12	7.06
Ninth	26	18.98	23	69.70	49	28.82
Tenth	8	5.84	1	3.03	9	5.29
Eleventh	6	4.38	0	0.00	6	3.53
District of Columbia	1	0.73	0	0.00	1	0.59
Total	137	100.00	33	100.00	170	100.00

Source: Second-Tier Database
Note: Column percentages may not total 100% due to rounding.

Table 2: Frequency of Dispositions Rendered on Appeal

Panel A: First-Tier Dispositions

Disposition	*Frequency*	*Percentage*
Negative	78	29.10
Hybrid	22	8.21
Positive	168	62.69
Total	268	100.00

Source: First-Tier Database

Panel B: Second-Tier Dispositions

Disposition	*Frequency*	*Percentage*
Negative	33	19.41
Hybrid	17	10.00
Positive	120	70.59
Total	170	100.00

Source: Second-Tier Database

Table 3: Data for First-Tier Appellate Bankruptcy Opinions with Positive Citing References

Panel A: Frequency of Positive Citation to First-Tier Appellate Opinions

Number of Citations	*Frequency*	*Percentage*
1	45	22.28
2	35	17.33
3	24	11.88
4	17	8.42
5	18	8.91
≥ 6	63	31.18
Total	202	100.00

Source: First-Tier Database

Panel B: Distribution of Positive Citations to First-Tier Appellate Opinions

N	*25%*	*Median*	*75%*	*Mean*
202	1	2	5	4

Source: First-Tier Database

Table 4: Circuit Court Affirmance of First-Tier Appellate Dispositions

Panel A: Partial or Full Affirmance

	Circuit Court Affirmance		
First-Tier Appellate Court	*No*	*Yes*	**Total**
BAP	5	52	57
	(8.77)	(91.23)	(100.00)
District Court	47	133	180
	(26.11)	(73.89)	(100.00)
Total	52	185	237
	(21.94)	(78.06)	(100.00)

Source: Affirmance Database

Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is 0.006.

Panel B: Full Affirmance

	Circuit Court Affirmance		
First-Tier Appellate Court	*No*	*Yes*	**Total**
BAP	11	46	57
	(19.30)	(80.70)	(100.00)
District Court	61	119	180
	(33.89)	(66.11)	(100.00)
Total	72	165	237
	(30.38)	(69.62)	(100.00)

Source: Affirmance Database

Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is 0.037.

Table 5: Citing Reference Data

Panel A: Federal Court Positive Citing Reference by Type of First-Tier Appellate Opinion

	Positive Citing Reference by Federal Court		
First-Tier Appellate Opinion Type	*No*	*Yes*	**Total**
BAP	10 (9.43)	96 (90.57)	106 (100.00)
District Court	56 (34.57)	106 (65.43)	162 (100.00)
Total	66 (24.63)	202 (75.37)	268 (100.00)

Source: First-Tier Database

Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is less than 0.0001.

Panel B: Citing Reference Data by Type of Citing Court for Positively Cited First-Tier Bankruptcy Appellate Opinions

	Citing References		
***Citing Court**: All Federal Courts*	*Median*	*Mean*	*N*
BAP Opinions	6.00	7.27	94
District Court Opinions	2.00	3.25	106
t-test of difference in means: $t = -6.5107$ ($p < 0.0001$)*** Wilcoxon rank-sum test: $z = -6.257$ ($p < 0.0001$)***			
***Citing Court**: Court of Appeals*	*Median*	*Mean*	*N*
BAP Opinions	0.00	0.45	94
District Court Opinions	0.00	0.19	106
t-test of difference in means: $t = -2.7414$ ($p = 0.0067$)** Wilcoxon rank-sum test: $z = -2.560$ ($p = 0.0105$)*			
***Citing Court**: Bankruptcy Appellate Panel*	*Median*	*Mean*	*N*
BAP Opinions	1.00	2.01	94
District Court Opinions	0.00	0.15	106
t-test of difference in means: $t = -9.7270$ ($p < 0.0001$)*** Wilcoxon rank-sum test: $z = -9.368$ ($p < 0.0001$)***			
***Citing Court**: District Court*	*Median*	*Mean*	*N*
BAP Opinions	0.00	0.57	94
District Court Opinions	1.00	0.99	106
t-test of difference in means: $t = 2.0821$ ($p = 0.0386$)* Wilcoxon rank-sum test: $z = 3.194$ ($p = 0.0014$)**			
***Citing Court**: Bankruptcy Court*	*Median*	*Mean*	*N*
BAP Opinions	3.00	4.23	94
District Court Opinions	1.00	1.92	106
t-test of difference in means: $t = -5.2142$ ($p < 0.0001$)*** Wilcoxon rank-sum test: $z = -4.593$ ($p < 0.0001$)***			
***Citing Court**: Extracircuit Federal Courts*	*Median*	*Mean*	*N*
BAP Opinions	1.50	2.52	94
District Court Opinions	1.00	1.51	106
t-test of difference in means: $t = -3.0581$ ($p = 0.0025$)** Wilcoxon rank-sum test: $z = -3.337$ ($p = 0.0008$)***			

Source: First-Tier Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$.

Panel C: Citing Reference Data by Depth of Treatment for Positively Cited First-Tier Bankruptcy Appellate Opinions

	Citing References		
***Depth of Treatment**: Mentioned*	*Median*	*Mean*	*N*
BAP Opinions	1.00	1.10	94
District Court Opinions	0.00	0.73	106
t-test of difference in means: $t = -1.8837$ ($p = 0.0611$) Wilcoxon rank-sum test: $z = -2.288$ ($p = 0.0221$)*			
***Depth of Treatment**: Cited*	*Median*	*Mean*	*N*
BAP Opinions	4.50	5.22	94
District Court Opinions	1.00	1.94	106
t-test of difference in means: $t = -7.3435$ ($p < 0.0001$)*** Wilcoxon rank-sum test: $z = -6.941$ ($p < 0.0001$)***			
***Depth of Treatment**: Discussed*	*Median*	*Mean*	*N*
BAP Opinions	0.00	0.89	94
District Court Opinions	0.00	0.48	106
t-test of difference in means: $t = -2.8311$ ($p = 0.0051$)** Wilcoxon rank-sum test: $z = -2.349$ ($p = 0.0188$)*			
***Depth of Treatment**: Examined*	*Median*	*Mean*	*N*
BAP Opinions	0.00	0.05	94
District Court Opinions	0.00	0.09	106
t-test of difference in means: $t = 1.0285$ ($p = 0.3050$) Wilcoxon rank-sum test: $z = 0.889$ ($p = 0.3741$)			

Source: First-Tier Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$.

Panel D: Federal Court Positive Quoting References by Type of First-Tier Appellate Opinion

	Positive Quoting Reference by Federal Court		
First-Tier Appellate Opinion Type	*No*	*Yes*	**Total**
BAP	33 (35.11)	61 (64.89)	94 (100.00)
District Court	65 (61.32)	41 (38.68)	106 (100.00)
Total	98 (49.00)	102 (51.00)	200 (100.00)

Source: First-Tier Database
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is less than 0.0001.

Panel E: Citing Reference Data for Positively Quoted First-Tier Bankruptcy Appellate Opinions

	Citing References		
First-Tier Appellate Opinion Type	*Median*	*Mean*	*N*
BAP Opinions	1.00	1.43	94
District Court Opinions	0.00	0.58	106
t-test of difference in means: $t = -4.4839$ ($p < 0.0001$)*** Wilcoxon rank-sum test: $z = -4.473$ ($p < 0.0001$)***			

Source: First-Tier Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$.

Panel F: Immediacy Data for Positively Quoted First-Tier Bankruptcy Appellate Opinions

	Number of Days		
First-Tier Appellate Opinion Type	*Median*	*Mean*	*N*
BAP Opinions	177	306	94
District Court Opinions	387	533	106
t-test of difference in means: $t = 4.0459$ ($p = 0.0001$)*** Wilcoxon rank-sum test: $z = 4.166$ ($p < 0.0001$)***			

Source: First-Tier Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$.

Table 6: Binary Logistic Regression Model of Circuit Court Affirmance

Variable	Affirmance	Full Affirmance
Court	3.947** (1.407, 11.069)	2.535* (1.119, 5.742)
Published	0.295** (0.129, 0.673)	0.287*** (0.138, 0.598)
Appellant	2.003 (0.815, 4.924)	4.293*** (1.886, 9.776)
Appellee	0.993 (0.434, 2.272)	2.372* (1.072, 5.249)
Chapter 7	1.594 (0.770, 3.299)	1.683 (0.852, 3.323)
Debtor Type	1.279 (0.581, 2.812)	0.936 (0.438, 2.000)
Dispute Type	0.940 (0.431, 2.048)	1.142 (0.544, 2.394)
Subject	0.596 (0.260, 1.365)	0.452* (0.206, 0.990)
FY 1998	1.103 (0.485, 2.511)	0.527 (0.247, 1.122)
FY 1999	0.721 (0.323, 1.611)	0.729 (0.336, 1.582)
N	237	237
Log likelihood	-110.133	-122.660
McFadden's R^2	0.117	0.157

Source: Affirmance Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$. Odds ratios presented with 95% confidence intervals in parentheses.

Table 7: Binary Logistic Regression Model of Positive Citation by a Federal Court to First-Tier Appellate Opinion

Variable	Positive Federal Court Citation
Court	3.445** (1.515, 7.836)
First-Tier Full Affirmance	1.459 (0.724, 2.942)
Published	6.810*** (3.391, 13.673)
Appellant	0.868 (0.361, 2.086)
Appellee	1.278 (0.524, 3.118)
Chapter 7	1.335 (0.644, 2.765)
Debtor Type	0.783 (0.321, 1.908)
Dispute Type	2.881* (1.148, 7.231)
Subject	3.392** (1.379, 8.346)
Subsequent Appeal	0.937 (0.450, 1.951)
FY 1998	0.745 (0.336, 1.653)
FY 1999	1.072 (0.469, 2.452)
N	268
Log likelihood	-116.625
McFadden's R^2	0.220

Source: First-Tier Database

Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$. Odds ratios presented with 95% confidence intervals in parentheses.

Table 8: Regression Analyses of Number of Positive Federal Court Citing References to Positively Cited First-Tier Appellate Bankruptcy Opinions (by Type of Federal Court)

Variable	All Federal Court Citations[a]	Bankruptcy Court Citations[b]	District Court Citations[c]	BAP Citations[b]	Court of Appeals Citations[d]	Extracircuit Citations[b]
Court	2.538*** (1.836, 3.509)	2.072*** (1.509, 2.845)	0.628* (0.410, 0.962)	9.702*** (5.462, 17.231)	2.336** (1.297, 4.206)	1.447* (1.030, 2.031)
First-Tier Full Affirmance	0.995 (0.732, 1.352)	0.985 (0.726, 1.337)		1.088 (0.738, 1.605)	0.873 (0.517, 1.473)	1.000 (0.716, 1.397)
Published	1.838** (1.128, 2.994)	1.563 (0.968, 2.526)		4.276 (0.985, 18.561)	3.524 (0.820, 15.141)	4.814*** (2.443, 9.488)
Appellant	1.020 (0.685, 1.519)	1.023 (0.686, 1.527)		0.925 (0.573, 1 493)	1.381 (0.614, 3.104)	1.055 (0.681, 1.633)
Appellee	1.005 (0.681, 1.485)	1.096 (0.740, 1 623)		0.470** (0.275, 0 802)	2.306* (1.101, 4.830)	1.194 (0.780, 1.828)
Chapter 7	1.395* (1.011, 1.924)	1.386* (1.010, 1.904)		1.330 (0.873, 2.026)	1 629 (0.901, 2.948)	1.112 (0.783, 1.581)
Debtor Type	0.741 (0.490, 1.120)	0.782 (0.517, 1.183)	0.673 (0.432, 1.050)	1.475 (0.803, 2.709)	0.400* (0.188, 0.852)	0.800 (0.512, 1.249)
Dispute Type	0.817 (0.551, 1.212)	0.796 (0.538, 1.178)		1.452 (0.871, 2.418)	0.678 (0.326, 1.413)	0.930 (0.614, 1.408)
Subject	1.435 (0.971, 2.121)	1 160 (0.783, 1.720)	1.492 (0.976, 2.280)	1.870* (1.125, 3.107)	1.341 (0.634, 2.838)	1.202 (0.797, 1.814)
Subsequent Appeal	1.092 (0.795, 1.501)	1.063 (0.777, 1.455)		1.169 (0.789, 1.731)	0.949 (0.536, 1.682)	1.127 (0.805, 1.579)
FY 1998	1.134 (0.778, 1.652)	0.845 (0.584, 1.223)	1.687* (0.999, 2.847)	1.657* (1.018, 2.697)	0.700 (0.376, 1.302)	0.914 (0.606, 1.378)
FY 1999	1.004 (0.711, 1.418)	0.926 (0.659, 1.301)	1.324 (0.789, 2.223)	1.237 (0.799, 1.915)	0.447* (0.240, 0.832)	0.867 (0.595, 1.263)

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Table 8 (continued)

	All Federal Court Citations[a]	Bankruptcy Court Citations[b]	District Court Citations[c]	BAP Citations[b]	Court of Appeals Citations[d]	Extracircuit Citations[b]
N	200	200	200	200	200	200
Log likelihood	-473.506	-427.097	-238.131	-209.440	-130.134	-359.980
McFadden's R^2	0.063	0.050	0.034	0.242	0.124	0.053

Source: First-Tier Database

Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$. Incidence rate ratios presented with 95% confidence intervals in parentheses.

[a] Zero-truncated negative binomial regression model.

[b] Negative binomial regression model.

[c] We have fitted a negative binomial regression model that does not include all of the independent variables in the table for the reasons set forth in *supra* note 161.

[d] Poisson regression model. When fitting a negative binomial regression model, the likelihood ratio test for alpha—the overdispersion parameter—was not significant (chi-squared = 2.52, df = 1, $p = 0.056$), thus indicating that the Poisson model is preferred.

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Table 9: Regression Analyses of Number of Positive Federal Court Citing References to Positively Cited First-Tier Appellate Bankruptcy Opinions (by Depth of Treatment)

Variable	Cited[a]	Discussed[b]	Quoted[a]
Court	2.525*** (1.922, 3.317)	1.798** (1.164, 2.779)	2.338*** (1.527, 3.580)
First-Tier Full Affirmance	1 023 (0.789, 1.325)		0.828 (0.561, 1.222)
Published	1.521 (0.997, 2 321)		1.535 (0.771, 3.056)
Appellant	1.127 (0.809, 1.569)		1.288 (0.761, 2.179)
Appellee	1.021 (0.735, 1.420)		1.373 (0.817, 2.307)
Chapter 7	1.352* (1.027, 1.779)		1.302 (0.853, 1.988)
Debtor Type	0.766 (0.541, 1.085)		0.663 (0.388, 1.135)
Dispute Type	0.853 (0.608, 1.197)		0.913 (0.549, 1.517)
Subject	1.174 (0.839, 1.643)	1.397 (0.882, 2.213)	1.059 (0.645, 1.741)
Subsequent Appeal	0.915 (0.699, 1.197)		0.676 (0.438, 1.043)
FY 1998	1.101 (0.804, 1.506)		1.450 (0.885, 2.374)
FY 1999	0.969 (0.725, 1.296)		1.366 (0.862, 2.163)
N	200	200	200
Log likelihood	-436.214	-221.011	-257.881
McFadden's R^2	0.076	0.021	0.060

Source: First-Tier Database

Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$. Incidence rate ratios presented with 95% confidence intervals in parentheses. We have only presented the results from those regression analyses in which the Court variable was a statistically significant predictor.

[a] Negative binomial regression model.

[b] We have fitted a negative binomial regression model that does not include all of the independent variables in the table for the reasons set forth in *supra* note 164.

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Table 10: Zero-Truncated Negative Binomial Regression Model of Number of Days for First Positive Federal Court Citing Reference to Positively Cited First-Tier Appellate Bankruptcy Opinions

Variable	Number of Days
Court	0.565*** (0.423, 0.753)
First-Tier Full Affirmance	0.913 (0.698, 1.194)
Published	0.922 (0.631, 1.345)
Appellant	1.116 (0.781, 1.595)
Appellee	1.097 (0.761, 1.582)
Chapter 7	0.767 (0.579, 1.016)
Debtor Type	0.889 (0.619, 1.275)
Dispute Type	0.836 (0.596, 1.174)
Subject	0.670* (0.480, 0.937)
Subsequent Appeal	0.681* (0.507, 0.914)
FY 1998	0.860 (0.607, 1.220)
FY 1999	0.927 (0.676, 1.272)
N	200
Log likelihood	-1392.339
McFadden's R^2	0.013

Source: First-Tier Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$. Incidence rate ratios presented with 95% confidence intervals in parentheses.

Table 11: Binary Logistic Regression Model of Direct Quotation of Positively Cited First-Tier Appellate Opinion by Positive Citing Federal Courts

Variable	Direct Quotation
Court	2.727** (1.393, 5.339)
First-Tier Full Affirmance	0.563 (0.297, 1.067)
Published	1.142 (0.455, 2.868)
Appellant	1.079 (0.473, 2.461)
Appellee	1.173 (0.514, 2.681)
Chapter 7	1.083 (0.555, 2.112)
Debtor Type	1.300 (0.572, 2.954)
Dispute Type	0.861 (0.381, 1.946)
Subject	1.050 (0.474, 2.328)
Subsequent Appeal	0.702 (0.360, 1.370)
FY 1998	1.079 (0.501, 2.323)
FY 1999	2.007 (0.964, 4.178)
N	200
Log likelihood	-126.033
McFadden's R^2	0.091

Source: First-Tier Database
Note: *** $p \leq 0.001$, ** $p \leq 0.01$, * $p \leq 0.05$. Odds ratios presented with 95% confidence intervals in parentheses.

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"The Threes": Re-Imagining Supreme Court Decisionmaking

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Chris Guthrie
61 Vand. L. Rev. 1825 (2008)

Article III authorizes "one Supreme Court," but it says virtually nothing about the Court's institutional design. Consistent with this Constitutional silence, the Court's size, docket, and courtroom practices have changed dramatically. For example, the Court has had as many as ten and as few as six members, and for nearly four decades, the Court delegated decisionmaking in the summer to one Justice! In this Essay, the first in a series of essays designed to re-imagine the Supreme Court, we argue that the Court should alter its decisionmaking processes in what might seem to be a radical way but, in fact, is not. We argue that the Court, like the United States Courts of Appeals and several foreign high courts, should adopt panel decisionmaking. Based on a theoretical and empirical analysis of the costs and benefits of a panel system, we contend that if the Court were to embrace panel decisionmaking, it would be better able to fulfill its Constitutional role as the leader of an ostensibly "coequal" branch of government.

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Misbehavior and Mistake in Bankruptcy Mortgage Claims

Katherine Porter*

The greatest fear of many families in serious financial trouble is that they will lose their homes. Bankruptcy offers a last chance for families to save their homes by halting a foreclosure and by repaying any default on their mortgage loans over a period of years. Mortgage companies participate in bankruptcy by filing proofs of claim with the court for the amount of the mortgage debt. To retain their homes, bankruptcy debtors must pay these claims. This process is well established and, until now, has been uncontroversial. The assumption is that the protective elements of federal bankruptcy shield vulnerable homeowners from harm.

This Article examines the actual behavior of mortgage companies in consumer bankruptcy cases. Using original data from 1,700 recent Chapter 13 bankruptcy cases, I conclude that mortgage companies frequently do not comply with bankruptcy law. A majority of mortgage claims are missing one or more of the required pieces of documentation for a bankruptcy claim. Furthermore, fees and charges on claims often are poorly identified, making it impossible to verify if such fees are legally permissible or accurate. In nearly all cases, debtors and mortgage companies disagree on the amount of outstanding mortgage debt.

Despite these irregularities, mortgage claims in bankruptcy are contested infrequently. Imposing unambiguous legal rules does not ensure that a system will actually function to safeguard the rights of parties. The findings of this Article are a chilling reminder of the limits of formal law to protect consumers. The observation that laws can underperform has crucial implications for designing legal systems that function as intended and for evaluating the appropriate scope of consumer protections.

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Misbehavior or mistake by mortgage servicers can have grave consequences. Undocumented or bloated claims jeopardize a family's ability to save its home. Beyond bankruptcy, poor or abusive mortgage servicing undermines the United States' home-ownership policies by exposing families to the risks of overpaying or suffering unjustified foreclosure. This Article's findings offer an empirical measure of the validity of concerns about whether consumers can trust mortgage companies to adhere to applicable laws.

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Families in serious financial trouble are under great stress. The telephone rings with repeated calls from debt collectors, each paycheck is at risk of garnishment, and the next knock on the door could be a process server or a repo agent. Yet, for many families, the greatest fear is losing their homes to foreclosure. A home is not only most families' largest asset, but also a tangible marker of their financial aspirations and middle-class status. A threatened or pending foreclosure can signal the end of a family's ability to struggle against financial collapse and begin an unrecoverable tumble down the socioeconomic ladder.

Bankruptcy offers these families one last chance to save their homes.[1] A bankruptcy filing halts a pending foreclosure and gives families the right under federal law to cure any defaults on mortgage loans over a period of years.[2] The bankruptcy system offers refuge from the vagaries of state foreclosure law, substituting the protections of the federal court system and uniform legal rules to ensure that these families get one final opportunity to preserve their homes.

But this protection comes at a cost. Mortgage companies file proofs of claim with bankruptcy courts for the amount of mortgage debts. In turn, bankrupt debtors must pay these claims or lose their homes. The balance between the family and the mortgage lender is clearly spelled out in the bankruptcy laws, which specify the manner in which the amount owed is to be established and obligate both the homeowner and the mortgage company to disclose information accurately.[3]

This claims process is well established and, until now, has been uncontroversial. Homeowners—backed up by lawyers, policy makers, and news reporters—assume that bankruptcy functions according to the official rules and that it provides a realistic opportunity for families to save their homes if they follow those rules. The data revealed in this Article suggest, however, that home-mortgage lenders often disobey the law and that the legal system does not function to substantiate the amounts that lenders assert that consumers owe. These problems can cripple a family's efforts to save its home and undermine policies that promote sustainable home ownership.

This Article examines the actual behavior of mortgage companies in the consumer bankruptcy system. Using original data from 1,700 recent Chapter 13 bankruptcy cases, I conclude that mortgagees' behavior significantly threatens bankruptcy's purpose of helping families save their homes. Despite

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1. *See* Raisa Bahchieva et al., *Mortgage Debt, Bankruptcy, and the Sustainability of Homeownership*, *in* CREDIT MARKETS FOR THE POOR 73, 104 (Patrick Bolton & Howard Rosenthal eds., 2005) (explaining that Chapter 13 bankruptcy is frequently used by families facing foreclosure).

2. ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE LAW OF DEBTORS AND CREDITORS 306 (5th ed. 2006).

3. *Id.* at 143; *see* FED. R. BANKR. P. 9011 (requiring that all petitions, pleadings, motions, and other papers filed with the court in a bankruptcy action have factual support).

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unambiguous federal rules designed to protect homeowners and ensure the integrity of the bankruptcy process,[4] mortgage companies frequently fail to comply with the laws that govern bankruptcy claims. A majority of mortgage companies' proofs of claim lack the documentation necessary to establish a valid debt. Fees and charges on bankruptcy claims often are identified poorly and sometimes do not appear to be legally permissible. On an aggregate level, mortgage creditors assert that bankrupt families owe them at least $1 billion more than the families who file bankruptcy believe they owe.[5] Although infractions are frequent and irregularities are sometimes egregious, the bankruptcy system routinely processes mortgage claims that do not comply with legal procedures. Far from serving as a significant check against mistake or misbehavior, the bankruptcy system routinely processes mortgage claims that cannot be validated and are not, in fact, lawful.

The data revealed here are important because they offer a rare glimpse into the high-stakes world of mortgage servicing. Whether a bankrupt family can save its home turns on the family's being able to find the money to cure its mortgage arrearage. The data on missing documentation, unsubstantiated fees, and discrepancies in record keeping, combined with the growing body of case law penalizing mortgage servicers for their conduct in bankruptcy cases, raise the specter that many bankrupt families may be overcharged or may unfairly lose their homes. Such realities undermine bankruptcy's core purpose of helping financially distressed families save their homes.[6]

The misbehavior and mistakes of mortgage servicers that this Article identifies in the bankruptcy data are not specific to the bankruptcy process. Indeed, the reliability of mortgage servicing may be worse for ordinary, nonbankrupt Americans. When these families face foreclosure, they lack the safeguards of the bankruptcy system—such as specific and uniform federal laws, bankruptcy trustees, specialized federal courts, and the representation of counsel—that are intended to ensure that mortgage servicers are complying with consumer-protection laws. This Article's findings suggest that a flawed system of mortgage servicing is a key contributor to the current crisis in the American home-mortgage market. Crafting an effective policy response to help homeowners requires that regulators and policy makers recognize how poor mortgage servicing can threaten families' efforts to save their homes.

The evidence that unreliable mortgage servicing is pervasive provides a powerful lesson on the limits of formal law. The procedures for bankruptcy claims were thoughtfully designed to balance the concerns of consumers and

4. *See, e.g.*, *In re* Matus, 303 B.R. 660, 675 (Bankr. N.D. Ga. 2004) ("The [bankruptcy] statutes are designed to insure complete, truthful and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction." (quoting *In re* Bratcher, 289 B.R. 205, 218 (Bankr. M.D. Fla. 2003))).

5. *See infra* text accompanying note 224.

6. *See* WARREN & WESTBROOK, *supra* note 2, at 306 (explaining that nearly every state had granted some level of protection from creditors by the end of the nineteenth century).

industry.[7] The written law contains clear instructions, and parties are given the opportunity to object to inappropriate conduct.[8] Indeed, the claims system has functioned for decades without generating calls for reform. Yet these data show that reality is far from the ideal suggested by these external markers of system reliability. These data show that there are significant defects in the bankruptcy system, a chilling reminder that imposing unambiguous legal rules does not ensure that a system will actually function to protect the rights of parties. In the context of consumer transactions—where individuals are not repeat players or institutional actors—the observation that laws underperform has crucial implications that echo far beyond bankruptcy policy. An effective legal system requires more than merely putting words into law and then relying on silence as an indication of acceptable and just behavior. These data show that effective enforcement mechanisms or structural incentives for industry compliance can be as important as the rigor of substantive rules.

Part I of this Article examines the incentives for mortgage servicers to comply with applicable laws and describes reported incidences of abusive servicing. Part II describes the Study's methodology. Part III presents original data on the legality and accuracy of mortgage claims. These data show a high incidence of unreliable servicing behavior, even in the context of the heightened procedural protections in bankruptcy. Part IV develops the policy implications of the findings and proposes structural solutions to reduce the risks that poor mortgage servicing imposes on homeowners and the legal system. Without improved procedures and enforcement activity, homeowners in financial trouble—both inside and outside of bankruptcy—remain vulnerable to mortgagees' misbehavior and mistakes.

I. Statement of the Problem

Americans pursue home ownership to build wealth and to improve their financial positions. The explosion of subprime lending and the rapid maturation of the securitization market for mortgages have fueled occasional criticisms of mortgage servicers, who are the intermediaries between consumers and mortgage holders.[9] Consumers have complained of overcharges and difficulty in obtaining accurate loan information. Increasingly, these problems erupt into litigation, most frequently in bankruptcy courts. Although policy makers have focused on loan origination,[10] consumers can

7. *See* MARGARET HOWARD, BANKRUPTCY: CASES AND MATERIALS 44 (4th ed. 2005) (noting that bankruptcy law attempts to protect the interests of both debtors and creditors).

8. *See infra* notes 228–29 and accompanying text.

9. In this Article, I refer only to servicers, but lenders who service their own loans may behave similarly to third-party servicers.

10. *See, e.g.*, Press Release, Iowa Attorney Gen., States Settle with Household Finance: Up to $484 Million for Consumers (Oct. 11, 2002), *available at* http://www.state.ia.us/government/ag/latest_news/releases/oct_2002/Household_Chicago.html (reporting that the multistate settlement with mortgage lender Household Finance Corp., for its misrepresentation and disclosure violations

suffer dire harms from poor mortgage servicing. Errors or overcharges increase the cost of home ownership and expose families to the risk of wrongful foreclosure. This Part explains the serious consequences of mortgage servicing and collects the scattered reports of servicing abuse. This review highlights the need for a systematic examination of the reliability of mortgage servicing.

A. The Structure and Function of Mortgage Servicing

Mortgage servicing is the collection of payments from borrowers and the disbursement of those payments to the appropriate parties, such as lenders, investors, taxing authorities, and insurers.[11] The rise of servicing as a distinct industry resulted from the widespread use of securitization in the mortgage market.[12] Put simply, securitization is the process of creating debt instruments (usually bonds) by pooling mortgage loans, transferring those obligations to a trust, and then selling to investors fractional interests in the trust's pool of mortgages.[13] These investors receive periodic payments on their investments.[14] Servicers act as intermediaries between the borrower and the other parties to the securitization.[15] A pooling-and-servicing agreement sets out the servicer's responsibilities for collecting and remitting the mortgage payments.[16] The participation of servicers complicates the borrower–lender relationship and limits flexibility in loss mitigation and default situations.[17]

Mortgage servicers do not have a customer relationship with homeowners; they work for the investors who own the mortgage-backed securities.[18] Borrowers cannot shop for a loan based on the quality of the

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at the loan origination phase, was the largest direct- restitution settlement ever in a state or federal case).

11. Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers*, 15 HOUSING POL'Y DEBATE 753, 755 (2004).

12. *See Possible Responses to Rising Mortgage Foreclosures: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. app. at 97 (2007) (statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation) ("Prior to the widespread use of securitization, home finance typically involved a bank or savings institution granting a loan to a borrower. The lending institution would make the decision to grant credit, fund the loan, and collect payments.").

13. *See* STEVEN L. SCHWARCZ ET AL., SECURITIZATION, STRUCTURED FINANCE, AND CAPITAL MARKETS 2 (2004) (providing an introduction to securitization and examining the legal issues relevant to securitized transactions).

14. *Id.*

15. *Id.* at 15.

16. *See Hearing*, *supra* note 12, app. at 101–02 (statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation) (explaining that a servicer must comply with the relevant securitization documents).

17. *See id.* app. at 102–06 (describing the conflicts of interest faced by servicers when managing mortgagees).

18. *Id.* app. at 103. However, lenders do have a customer relationship with borrowers and may want to retain them as repeat customers. SCHWARCZ ET AL., *supra* note 13, at 15. Some lenders retain the servicing obligations when they sell loans on the secondary market, but the active market for servicing contracts means that very few customers will find that their loans are serviced by the

servicing, and they have virtually no ability to change servicers if they are dissatisfied with the servicers' conduct.[19] The only exit strategy for a dissatisfied borrower is refinancing the mortgage, and even then, the homeowner may find the new loan assigned to the prior servicer.[20] Because their customers are the trustees who hire them to collect on behalf of investors, servicers have few reputational or financial constraints pushing them to work to satisfy homeowners with their performance.[21]

In fact, servicers have a financial incentive to impose additional fees on consumers. Mortgage servicers earn revenue in three major ways. First, they receive a fixed fee for each loan. Typical arrangements pay servicers between 0.25% and 0.50% of the note principal for each loan.[22] Second, servicers earn "float" income from interest accrued between when consumers pay and when those funds are remitted to investors.[23] Third, servicers often are permitted to retain all, or part, of any default fees, such as late charges, that consumers pay.[24] In this way, a borrower's default can boost a servicer's profits. A significant fraction of servicers' total revenue comes from retained-fee income.[25] Because of this structure, servicers' incentives upon default may not align with investors' incentives.[26] Servicers have incentives to make it difficult for consumers to cure defaults.

A consumer is only obligated to pay charges if the charges are permitted by the terms of the mortgage and by state and federal law. To validate such charges, consumers must know how the servicer calculated the amount due and whether such fees are consistent with their loan contracts. A lending industry representative has admitted that "[m]ost people don't understand the

originating lender. *See* Jack M. Guttentag, A Mortgage Servicing System for Borrowers?, http://www.mtgprofessor.com/A%20-%20Servicing/a_servicing_system_for_borrowers.htm ("The great majority of loans today are serviced by firms that don't own them.").

19. Jack M. Guttentag, Why Is Mortgage Servicing So Bad?, http://www.mtgprofessor.com/A%20-%20Servicing/why_is_servicing_so_bad.htm (last modified Dec. 13, 2004) (explaining that borrowers cannot easily choose a servicer based on the quality of servicing, nor can they fire a servicer for poor servicing).

20. *See id.* (describing borrowers' inability to select their mortgage servicers).

21. *Id.*

22. NAT'L CONSUMER LAW CTR., FORECLOSURES 148 (2d ed. 2007).

23. Kurt Eggert, *Comment on Michael A. Stegman et al.'s "Preventive Servicing Is Good for Business* and *Affordable Homeownership Policy": What Prevents Loan Modifications?*, 18 HOUSING POL'Y DEBATE 279, 286 (2007).

24. Eggert, *supra* note 11, at 758.

25. Some information can be gleaned from the securities filings of public companies that service mortgages. Late charges accounted for approximately 11% of revenues for Ocwen's residential-mortgage-servicing division in 2006. *See* Ocwen Fin. Corp., Annual Report (Form 10-K), at 30 (Mar. 16, 2007); *cf.* RONALD J. MANN, CHARGING AHEAD 23 (2006) (reporting that credit-card issuers earn 9% of their revenue from penalty fees).

26. *See Hearing*, *supra* note 12, at 9 (describing the conflicting interests of the participants in a securitization).

most basic things about their mortgage payment[s]."[27] Mortgage servicers can exploit consumers' difficulty in recognizing errors or overcharges by failing to provide comprehensible or complete information. In fact, poor service to consumers can actually maximize servicers' profits.[28] Indeed, it appears that servicers fail to satisfy customers. A study of consumer satisfaction with business services found that only 10% of borrowers are happy with their mortgage servicers.[29]

Spiking foreclosure rates and pressure from Wall Street may exacerbate problems with mortgage servicing.[30] Falling real-estate prices have changed the profit calculus of foreclosure, encouraging lenders to reach out to delinquent borrowers.[31] Facing political and financial pressure, lenders and servicers are struggling to develop cost- and time-effective strategies for loss mitigation.[32] However, cash-strapped lenders have fewer resources than ever to devote to loan servicing.[33] Just as more borrowers risk losing their homes, servicers may have to lay off employees, skimp on procedural safeguards, or reduce investment in technology. These changes do not portend well for borrowers in high-cost loans or those seeking loan modifications.[34] Mortgage servicing is a crucial part of the home-ownership process that must be part of any response to the rising foreclosure rate and downturn in the mortgage market.

27. *Lenders Look for Way to Avoid Bankruptcy Maze*, NAT'L MORTGAGE NEWS, Aug. 30, 2004, at 23 [hereinafter *Lenders Look*], *available at* http://www.nationalmortgagenews.com/premium/archive/?id=147519.

28. *See* Guttentag, *supra* note 19 (arguing that the normal financial incentives to provide quality service do not exist within the current structure of the loan-servicing industry).

29. Press Release, J.D. Power & Assocs., Customer Service and Attention to Detail Drive Home Mortgage Satisfaction 1 (Nov. 26, 2002) (on file with the Texas Law Review).

30. *See* Posting of Tara Twomey to Credit Slips, http://www.creditslips.org/creditslips/2007/03/subprime_servic.html (Mar. 19, 2007, 23:32 PDT) ("Financial troubles, staff layoffs and potentially higher servicing costs on defaulting loans have led to concerns that servicing quality may decline.").

31. *See, e.g.*, Carrick Mollenkamp, *Faulty Assumptions: In Home-Lending Push, Banks Misjudged Risk*, WALL ST. J., Feb. 8, 2007, at A1 (discussing mega-bank HSBC's recent efforts to work with troubled borrowers, including hiring more employees to work out payment plans and implementing a top-down overhaul of its entire mortgage-services branch).

32. *See id.* (describing HSBC's expanded loss-mitigation efforts); Ruth Simon, *Digging Out of Delinquency*, WALL ST. J., Apr. 11, 2007, at D1 ("The sharp rise in delinquencies in recent months is straining mortgage companies' ability to respond quickly to borrowers, with such solutions as new repayment plans or modifications to loan agreements.").

33. *See* Simon, *supra* note 32, at D1 (describing the heightened strains on servicers as the volume of default increases).

34. *See* Eggert, *supra* note 23, at 284–92 (documenting barriers that servicers face in loan modifications).

B. Homeowners in Bankruptcy

Most consumers who file Chapter 13 bankruptcy cases are homeowners.[35] The requirements of the Bankruptcy Code impose new burdens on mortgage servicers. In turn, these complexities create new opportunities for mortgage-servicing abuse. The harms of poor mortgage servicing are heightened in bankruptcy, a supposed refuge for families trying to save their homes.

When a borrower files for bankruptcy, the creditor is barred by the automatic stay from pursuing other legal action to collect the debt.[36] Pending foreclosures may not proceed against the debtor's home, unless the court grants the creditor permission to do so.[37] Many homeowners are in default on their mortgage loans when they seek bankruptcy relief.[38] Because families typically struggle for months before filing bankruptcy,[39] their mortgage accounts at the time of bankruptcy may be loaded with default charges, penalty fees, and foreclosure costs. To retain their homes in bankruptcy, Chapter 13 requires debtors to pay these arrearage amounts in full (including any regular monthly payments that were not made before the bankruptcy).[40]

To establish the arrearage amount that must be cured, creditors usually file proofs of claim.[41] Even if their loans are not in default, many mortgagees

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35. *See* TERESA SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 202 (2000) (stating that half of all bankruptcy debtors are homeowners); Bahchieva et al., *supra* note 1, at 104–05 (explaining that although most debtors prefer Chapter 7, homeowners disproportionately choose Chapter 13 because Chapter 7 does not protect home equity).

36. 11 U.S.C. § 362(a) (2006).

37. *See id.* § 362(b) (setting out the exceptions to the automatic stay).

38. *See* Bahchieva et al., *supra* note 1, at 73, 104 (finding that bankrupt homeowners are about 50% more likely to file Chapter 13 than Chapter 7, and attributing this preference to Chapter 13's special protections for homeowners in default).

39. The median family that files for bankruptcy reports seriously struggling with debts for more than one year before filing bankruptcy. This query was posed to Chapter 7 and Chapter 13 debtors in telephone interviews one year after the respondent filed for bankruptcy. *See* Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 381–82, 382 fig.12 (2008) (reporting data from telephone surveys of families in bankruptcy).

40. *See* 11 U.S.C. § 1322(b)(2) (2000) (providing that the Chapter 13 bankruptcy plan may "modify the rights of holders of secured claims, *other than* a claim secured by a security interest in real property that is the debtor's principal residence") (emphasis added); § 1322(b)(5) (providing that "notwithstanding paragraph (2) of this subsection," the bankruptcy plan may "provide for the curing of any default within a reasonable time"); *see also* Mark S. Scarberry & Scott M. Reddie, *Home Mortgage Strip Down in Chapter 13 Bankruptcy: A Contextual Approach to Sections 1322(b)(2) and (b)(5)*, 20 PEPP. L. REV. 425, 431 (1993) ("Most homeowners in Chapter 13 must, as a practical and ultimately a legal matter, use § 1322(b)(5) to cure their defaulted home mortgages if they wish to keep their homes.").

41. *See* Official Bankruptcy Form 10 (2007), *available at* http://www.uscourts.gov/rules/BK_Forms_1207/B_010_1207f.pdf (instructing secured creditors to list the amount of any arrearage as of the time that the case is filed). *See generally* David Gray Carlson, *Proofs of Claim in Bankruptcy: Their Relevance to Secured Creditors*, 4 J. BANKR. L. & PRAC. 555 (1995) (describing the reasons why secured creditors file proofs of claim).

will file claims to establish the amount of outstanding principal. While liens on a debtor's property pass unaffected through bankruptcy[42] barring a specific challenge based on special bankruptcy avoidance powers,[43] creditors who wish to receive distributions from the trustee must file claims.[44] Trustees normally pay arrearage amounts to servicers from debtors' Chapter 13 payments.[45] In some jurisdictions, trustees also collect and transmit the regular ongoing mortgage payments to servicers.[46]

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42. *See* 11 U.S.C. § 524(a) (stating that discharge "voids any judgment at any time obtained, to the extent that such judgment is a determination of the *personal liability* of the debtor") (emphasis added); Johnson v. Home State Bank, 501 U.S. 78, 83 (1991) (noting that discharge extinguishes *only* the personal liability of the debtor and that a creditor still has the right to foreclose on a mortgage); Marianne B. Culhane & Michaela M. White, *Debt After Discharge: An Empirical Study of Reaffirmation*, 73 AM. BANKR. L.J. 709, 714 (1999) ("Valid liens on collateral survive the discharge.").

43. *See* 11 U.S.C. §§ 544, 547 (2006) (establishing the powers of the trustee and allowing avoidance of a transfer when several conditions are satisfied).

44. *See* FED. R. BANKR. P. 3002 (providing that, with certain exceptions, an "unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed"); FED. R. BANKR. P. 3021 (providing that distribution under the plan will be made to creditors whose claims have been allowed and to certain others); *see also* WARREN & WESTBROOK, *supra* note 2, at 219 ("To receive any distribution, each Chapter 7 or Chapter 13 creditor must submit a proof of claim.").

45. *See* 11 U.S.C. § 1326(c) ("Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan."); *see also* Henry E. Hildebrand III, *The Sad State of Mortgage Service Providers*, AM. BANKR. INST. J., Sept. 2003, at 10, 10 (explaining that trustees are required by the terms of confirmed Chapter 13 plans to make arrearage payments to mortgage companies).

46. *See* Scott F. Norberg & Nadja Schreiber Compo, *Report on an Empirical Study of District Variation, and the Roles of Judges, Trustees and Debtors' Attorneys in Chapter 13 Bankruptcy Cases*, 81 AM. BANKR. L.J. 431, 446 (2007) (reporting that in three of the seven bankruptcy districts surveyed in the article, the practice was for Chapter 13 debtors to make mortgage payments through the trustee). Practices for paying mortgage creditors in Chapter 13 cases vary. In some jurisdictions, ongoing mortgages are paid "outside the plan," meaning that the debtor continues to make the ongoing principal and interest payments directly to the mortgage servicer without trustee involvement. *See id.* (finding three other bankruptcy districts where the practice was for Chapter 13 debtors to make mortgage payments directly to the creditor); *see also* Timothy D. Moratzka, *Commission-Free: Chapter 13 Debtor as Dispersing Agent*, AM. BANKR. INST. J., Oct. 2007, at 14, 14 (presenting cases from jurisdictions where the debtors were allowed to make mortgage payments "outside the plan"). Even in these jurisdictions, the trustee usually collects the debtor's payment of any arrearages on the mortgage loan; in other districts, the trustee collects both the arrearage amounts and the ongoing mortgage payments. *See* Hildebrand, *supra* note 45, at 40 ("More and more chapter 13 trustees are being required by the terms of confirmed plans to make not only the arrearage payments to mortgagees, but also the payments to maintain the regular monthly payments.").

These practices are yet another example of the well-documented phenomena of "local legal culture" in bankruptcy cases. *See generally* Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501 (1993) (contrasting the cultures of bankruptcy practices in different locations); Lynn M. LoPucki, *Legal Culture, Legal Strategy, and the Law in Lawyers' Heads*, 90 NW. U. L. REV. 1498 (1996) (using examples of local bankruptcy practices to explain the nature and evolution of law); Teresa A. Sullivan et al., *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 HARV. J.L. & PUB. POL'Y 801 (1994) (using examples of the differing bankruptcy practices in various locales to stress the importance of "local legal culture").

A claims process is incorporated into every bankruptcy case to determine how much each creditor is owed and to adjudicate any disputes about the debt. These proofs of claim are bankruptcy's alternative mechanism to separate lawsuits by each creditor to collect a debt. In the mortgage context, a proof of claim functions similarly to a complaint to foreclose and collect a deficiency judgment. That is, the claim should establish a creditor's interest in the debtor's home as a mortgagee and the amount owed on the mortgage note. The debtor has the opportunity to "answer" by objecting to the claim. The bankruptcy court then has authority to fix the claim. Because proofs of claim are the most common interaction between debtors and creditors in the bankruptcy system,[47] they offer an excellent mechanism for examining the behavior of mortgage servicers in bankruptcy cases.

C. The Harms of Abusive Servicing

Mortgage-servicing abuse can take several forms. The Federal Trade Commission (FTC) believes that poor servicing can be a serious problem for homeowners and has identified several abusive practices, including the imposition of unwarranted late fees, unnecessary force-placed insurance, and illegal fees.[48] Two cases illustrate the problems that incorrect or inaccurate mortgage servicing imposes on borrowers. In *Rawlings v. Dovenmuehle Mortgage, Inc.*,[49] the servicer repeatedly asserted that the homeowners had failed to make payments even though the servicer itself had erred by applying the payments to the wrong account.[50] After the servicer sent notices of default and imposed late fees, the homeowners spent over seven months attempting to resolve the servicer's error.[51] In another instance, *Islam v. Option One Mortgage Corp.*,[52] the borrowers refinanced, but the prior servicer continued to threaten to foreclose on the borrowers' home and to report adverse information to credit bureaus.[53] This year, the *Boston Globe* reported that mortgage companies typically include projected foreclosure costs in payoff amounts given to borrowers in default.[54] These fees are estimates for anticipated services, which may never be rendered. While a

47. While claims are the most common creditor activity in bankruptcy cases, claims are not filed by every creditor. *See* 1 KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY § 67.1 (3d ed. 2000 & Supp. 2004) (stating that numerous creditors fail to file proofs of claim).

48. DIV. OF CONSUMER & BUS. EDUC., FED. TRADE COMM'N, MORTGAGE SERVICING: MAKING SURE YOUR PAYMENTS COUNT 3 (2008), *available at* http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.pdf.

49. 64 F. Supp. 2d 1156 (M.D. Ala. 1999).

50. *Id.* at 1159–60.

51. *Id.*

52. 432 F. Supp. 2d 181 (D. Mass. 2006).

53. *Id.* at 183–84.

54. Sacha Pfeiffer, *Hidden Legal Fees Push Some into Foreclosure*, BOSTON GLOBE, Jan. 18, 2007, at D1.

consumer advocate described the practice as a "license to steal from homeowners," an industry representative conceded that it was "pretty much industry standard."[55]

The likelihood that such practices translate into concrete harms is sharpened because consumers report serious difficulty in communicating with mortgage servicers when they perceive that an error or overcharge has occurred.[56] Consumers allege that they have to speak with dozens of representatives to address servicing mistakes or to receive basic information such as a payment history.[57] These problems are exacerbated when a borrower defaults on a loan, in part because the loan is often transferred to the loss-mitigation department or sold to a different servicer that specializes in troubled loans.[58]

Abusive servicing can push a homeowner into default or can make it hard or impossible for a homeowner to climb out of trouble. Research has shown that the quality of loan servicing can affect the incidence of loan default.[59] Servicers may alter their practices and delay foreclosure to drive up their profits because they do not have incentives to care about preventing foreclosure.[60] While preventive servicing can reduce loss severities,[61]

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55. *Id.*

56. *See, e.g.*, S.P. Dinnen, *Mortgage Complaints Can Take Extra Effort*, DES MOINES REG., May 2, 2004, at 1D (detailing scenarios in which consumers had to repeatedly argue with their mortgage servicers over the servicers' accounting mistakes); Adolfo Pesquera, *Paper Trail of Problems: Some Fairbanks Clients Report Nightmare Errors*, SAN ANTONIO EXPRESS–NEWS, Aug. 9, 2002, at 1E (reporting repeated complaints that Fairbanks Capital Corporation does not properly record payments and then holds its customers responsible for the errors).

57. *See* Posting of Ben Popken to The Consumerist, http://consumerist.com/5047947/12-confessions-of-a-home-mortgage-collector (Sept. 10, 2008, 12:36 EDT) (reporting that mortgage-servicing employees frequently hang up or transfer homeowners back into queue in order to avoid work); Posting of Katie Porter to Credit Slips, http://www.creditslips.org/creditslips/2008/07/the-really-sad.html (July 15, 2008, 10:01 PDT) (providing a transcript of a debtor's call to his mortgage servicer in which he was transferred and put on hold and was unable to learn the reason for a charge).

58. *See* Popken, *supra* note 57 ("The Loss Mitigation department has NO CLUE what they are doing."); *see also Policing Lenders and Protecting Homeowners: Is Misconduct in Bankruptcy Fueling the Foreclosure Crisis? Hearing Before the Subcomm. on Admin. Oversight and the Courts of the S. Comm. on the Judiciary*, 110th Cong. (2008) (statement of Robin Atchley), *available at* http://judiciary.senate.gov/hearings/testimony.cfm?id=3327&wit_id=7158 (testifying that while her account was in bankruptcy, no person with Countrywide could ever give her clear information on what they claimed was owed or why that amount was owed).

59. *See* Anthony Pennington-Cross & Giang Ho, *Loan Servicer Heterogeneity and the Termination of Subprime Mortgages* 19, 19–20 (Fed Reserve Bank of St. Louis, Working Paper No. 2006-024A, 2006), *available at* http://research.stlouisfed.org/wp/2006/2006-024.pdf (finding "strong evidence" that the identity of the individual mortgage servicer substantially affected the chance of default among a large sample of subprime mortgages).

60. *See* Yingjin Hila Gan & Christopher Mayer, *Agency Conflicts, Asset Substitution, and Securitization* 19–20 (Nat'l Bureau of Econ. Research, Working Paper No. 12,359, 2006), *available at* http://www.nber.org/papers/w12359 (finding that mortgage servicers often delay foreclosure proceedings so that they can avoid the costs associated with foreclosure and collect additional fees while the loan spends time in special servicing).

abusive servicing can heighten them. Without servicers' reaching out to consumers and spending the necessary time and money, sensible loan modification opportunities will be missed.[62] Families who could have saved their homes with a repayment plan or modification will lose their homes, and investors will suffer unmitigated losses.[63]

The harms of servicing abuse may be even higher for families in bankruptcy, which often file Chapter 13 in a final effort to save their homes. If bankruptcy claims contain illegal fees, debtors will face increased burdens in confirming repayment plans and be forced to find extra income to make bloated payments. Even if the servicing harm is limited to informational problems, debtors suffer harms. As one bankruptcy court recognized, mistakes by creditors, who are in control of the accounts, impose additional costs on debtors—the parties who can least afford such expense—to sort out such problems.[64] Servicing problems also jeopardize the ability of courts and trustees to administer bankruptcy cases correctly and fairly. Other creditors are harmed if mortgage companies wrongly divert money that should be available to pay unsecured creditors and increase the administrative costs of bankruptcy. If servicing abuse is routine, this also weakens our collective confidence in the integrity of the bankruptcy system and the power of law to balance the rights of consumers and businesses.

D. Litigation on Mortgage-Servicing Practices

Mortgage-servicing abuse is a nascent legal issue.[65] Depending on the type of misbehavior, consumers may have both federal and state claims and both common law and statutory remedies.[66] While the case law is growing, there are still relatively few adjudicated decisions on mortgage-servicing

61. *See* Michael A. Stegman et al., *Preventive Servicing Is Good for Business* and *Affordable Homeownership Policy*, 18 HOUSING POL'Y DEBATE 243, 246 (2007) (presenting data that show that effective preventive-servicing strategies increase dollars collected, reduce overall operating costs, and slow the rate at which mortgages progress into delinquency).

62. *See* Eggert, *supra* note 23, at 282 (recounting a 2007 statement from a federal regulatory authority encouraging mortgage servicers to use loan modification and other loss-mitigation techniques to keep borrowers in their homes).

63. *See id.* at 284 ("Effective loan modifications, which can result from preventive servicing, can both reduce borrowers' payments, helping to keep them in their homes, and save investors from credit losses that result from foreclosure.").

64. *See* Williams v. Fairbanks Capital Corp. (*In re* Williams), Case No. 00-00770-W, Adv. No. 01-80105-W, 2001 WL 1804312, at *1–2 (Bankr. D.S.C. Nov. 19, 2001) (awarding punitive damages to the debtor after the debtor incurred substantial attorneys fees, other costs, and lost wages responding to inaccurate court documents filed by the creditor due to errors in its records).

65 NAT'L CONSUMER LAW CTR., *supra* note 22, at 147 n.1 (citing recently published authorities describing the growing problem of mortgage-servicing abuse).

66. *See id.* at 179 (explaining that, in addition to federal claims brought under the Real Estate Settlement Procedures Act, 15 U.S.C. §§ 2601–2617 (2006), consumers often may bring claims under state unfair-and-deceptive-trade-practices acts and common law breach-of-contract, breach-of-fiduciary duty, and tort claims).

problems.[67] Several explanations exist. Consumers may not be aware of their rights or be able to afford attorneys.[68] The relative youth of mortgage servicing as an industry means that few attorneys or judges understand the legal and factual issues involved.[69] Regulatory authority for mortgage servicing is fractured.[70] The paucity of decisions suggests that many consumers may respond to mortgage claims by "lumping it" rather than seeking any formal redress.[71] Consumers who litigate these disputes face all the challenges of typical consumer-protection litigation, including limited access to attorneys, expensive and complicated evidentiary issues, and insufficient remedies to justify such suits.[72]

Most litigation against mortgage servicers has occurred in the context of bankruptcy cases.[73] Bankruptcy changes the dynamic between borrowers and servicers. The vast majority of consumers hire attorneys to represent them in their bankruptcies.[74] Without counsel, consumers may be unable to raise such claims. They may also have trouble identifying attorneys who are familiar with such issues or willing to take such suits on a stand-alone basis. As part of the bankruptcy case, the attorney may find it difficult to obtain the cooperation of the mortgage servicer,[75] and litigation may be necessary to fulfill the attorney's duty of representation.[76] While bankruptcy is the context for most servicing disputes, the problems identified in bankruptcy

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67. *See generally* Gretchen Morgenson, *Dubious Fees Hit Borrowers in Foreclosure*, N.Y. TIMES, Nov. 6, 2007, at A1 (chronicling several ongoing lawsuits alleging serious misconduct by mortgage-servicing providers).

68. *See* Eggert, *supra* note 11, at 768 (arguing that most borrowers are unable to enforce their legal rights because they rarely read their mortgage-loan contracts and usually cannot afford to retain an attorney to pursue litigation under consumer-protection statutes).

69. *See, e.g.*, NAT'L CONSUMER LAW CTR., *supra* note 22, at 201–03 (documenting conflicting decisions in the federal courts regarding mortgage servicers' claims that the requirements of the Fair Debt Collection Practices Act (FDCPA) and Real Estate Settlement Procedures Act (RESPA) are preempted by the Bankruptcy Code).

70. *See* Eggert, *supra* note 11, at 774–75 (expressing concern that legislation passed by several states to curb servicer abuses may be subject to federal preemption).

71. *See* Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4, 14 (1983) ("Even where injuries are perceived, a common response is resignation, that is, 'lumping it.'").

72. *See* JOHN A. SPANOGLE ET AL., CONSUMER LAW: CASES AND MATERIALS 772 (3d ed. 2007) (discussing the barriers to consumer litigation).

73. *See Lenders Look*, *supra* note 27 (quoting an employee of a servicer remarking that "[b]ankruptcy is becoming fertile ground for a lot of loopholes and a lot of lawsuits and a lot of costs to servicers").

74. *See* TERESA SULLIVAN ET AL., AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA 22–23 (1989) (finding that only 4% of debtors in a sample of 1,529 bankruptcy cases filed pro se petitions).

75. *See* Hildebrand, *supra* note 45, at 10 (describing mortgage servicers' inability or lack of effort to make their records match debtors' plans or to comply with the requirements of the Bankruptcy Code, such as disclosing fees and costs).

76. *See* MODEL RULES OF PROF. CONDUCT pmbl. para. 2 (2007) ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.").

cases often originate months or years earlier and are equally likely to occur when a borrower is in default but does not file for bankruptcy.[77]

Bankruptcy courts have repeatedly expressed frustration with mortgagees' failure to provide complete and accurate information.[78] Courts and litigants have struggled to obtain comprehensible records from servicers. In *Maxwell v. Fairbanks Capital Corp.*,[79] the court described the creditor's pleadings: "Thus, Fairbanks, in February 2000, represented that the Debtor owed it $48,691.36 *less* than what it demanded of the Debtor in April of 1998 and $192,963.64 *more* than it demanded of her on July 13, 1999."[80] The court found that "Fairbanks, in a shocking display of corporate irresponsibility, repeatedly fabricated the amount of the Debtor's obligation to it out of thin air."[81] The court held that this behavior violated both federal and state law.[82] After the court's ruling on liability, the debtor settled the case for a full discharge of her mortgage and $125,000 in damages and attorneys fees.[83]

Other courts have identified a similar pattern of confusing or incomplete record keeping as evidenced by servicers' proofs of claim. Unable to decipher a servicer's records, even after ordering further document production, one court finally resorted to creating its own amortization table.[84] The judge stated, "The poor quality of the papers filed by Fleet to support its claim is a sad commentary on the record keeping of a large financial institution. Unfortunately, it is typical of the products generated by lenders and loan servicers in court proceedings."[85] In some instances, mortgagees apparently are unable to offer any accounting to support their claims. In *Litton Loan Servicing v. Garvida*,[86] when the servicer failed to respond to a court order to provide information, the bankruptcy appellate panel affirmed that a downward adjustment of the mortgagee's claim was an appropriate

77. Email from Keith M. Lundin, Bankr. Judge, U.S. Bankr. Court for the Middle Dist. of Tenn., to Henry J. Sommer (July 12, 2004) (on file with the Texas Law Review) (recounting the discussion at a session on mortgage-servicing problems in Chapter 13 cases, which occurred at a 2004 National Association of Chapter 13 Trustees meeting). The grievances aired were: (1) servicers are unable to prepare correct pre-petition claims in Chapter 13 cases; (2) proofs of claim are filed without balances or are bloated with illegal and fraudulent fees sometimes totaling several thousand dollars; (3) irreconcilable and unexplained balances appear on amended proofs of claim; (4) servicers provide no contact information; and (5) servicers refuse to provide loan payment histories. *Id.*

78. *See* Hildebrand, *supra* note 45, at 40 (describing judges' critical responses to mortgagees' "deplorable records").

79. Maxwell v. Fairbanks Capital Corp. (*In re* Maxwell), 281 B.R. 101 (Bankr. D. Mass. 2002).

80. *Id.* at 114.

81. *Id.* at 117.

82. *Id.* at 120, 132.

83. Agreement for Judgment at 2, *In re* Maxwell, 281 B.R. 101 (No. 00-142383) (on file with the Texas Law Review).

84. *In re* Wines, 239 B.R. 703, 706 (Bankr. D.N.J. 1999).

85. *Id.* at 709.

86. *In re* Garvida, 347 B.R. 697 (B.A.P. 9th Cir. 2006).

remedy.[87] Another court reduced a mortgagee's claim under the equitable theory of recoupment after finding that the servicer violated the Real Estate Settlement Procedures Act[88] (RESPA) by failing to respond to the debtor's requests for an account balance.[89] The opinion's first sentence reveals the court's frustration: "Is it too much to ask a consumer mortgage lender to provide the debtor with a clear and unambiguous explanation of the debtor's default prior to foreclosing on the debtor's house?"[90] In some instances, creditors have paid the price for their attorneys' poor record keeping. In *In re Hight*,[91] the court disallowed the portion of a mortgagee's claim that pertained to attorneys fees because neither the creditor nor its law firm could provide evidence of the legal work, such as the hourly rate or the time spent.[92] In one egregious case, a mortgage company filed a proof of claim for more than $1 million when the principal balance on the note was $60,300.03.[93] The inaccuracy likely stemmed from the claimant's mistake in reporting the cost of the insurance policy that the servicer forced on the debtor after the debtor's insurance lapsed. These types of problems led a prominent Chapter 13 trustee to conclude that mortgage servicing in bankruptcy is in a "sad state."[94]

Mortgage-servicing problems have surfaced in other procedural contexts besides proofs of claim. The nature of this misconduct is rarely due to the posture of the case, however, and similar problems may infect mortgage claims or nonbankruptcy servicing. For example, bankruptcy motions for relief from the automatic stay put debtors at direct risk of losing their homes in a state-law foreclosure action. This context may spur debtors and their attorneys to respond by confronting servicing inaccuracies that went unidentified in proofs of claim. Several courts have complained about unsubstantiated or patently false allegations in mortgagees' motions for relief from the stay.[95] Courts have lamented mortgage servicers' practice of filing motions to vacate the automatic stay based on nonexistent records or inaccurate information stemming from poor accounting practices, and have

87. *Id.* at 707–08.

88. 12 U.S.C. § 2617(c)(1) (2006).

89. *See In re* Thompson, 350 B.R. 842, 852 (Bankr. E.D. Wis. 2006) (explaining that the debtors could reduce the amount of the claim via recoupment even though RESPA does not explicitly authorize it).

90. *Id.* at 844–45.

91. No. 07-36683, 2008 WL 3539802 (Bankr. S.D. Tex. Aug. 13, 2008).

92. *Id.* at *13.

93. Proof of Claim, *In re* Farmer, No. 04-35273 (Bankr. D. Mass. June 1, 2004) (on file with the Texas Law Review).

94. *See* Hildebrand, *supra* note 45, at 10.

95. *See, e.g.*, *In re* Schuessler, 386 B.R. 458, 492–93 (Bankr. S.D.N.Y. 2008) (imposing sanctions requiring the creditor to pay the debtors' attorneys fees and costs caused by the filing of an unsubstantiated motion for relief from the stay); *In re* Parsley, 384 B.R. 138, 180 (Bankr. S.D. Tex. 2008) (finding that an attorney's misrepresentation of the stay-relief motion was conducted in bad faith, but declining to impose sanctions).

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rejected what one court termed the mortgage servicers' "dog ate my homework" excuses for such problems.[96] These courts have emphasized two main harms: (1) damage to the judicial process when a court is asked to rule on incorrect or baseless facts, and (2) the danger that a family will lose its home without just cause and in violation of the Bankruptcy Code.

In *Jones v. Wells Fargo Home Mortgage*,[97] the court identified a variety of accounting errors and impermissible behavior by a mortgage company, including miscalculations of both pre-petition and post-petition obligations and attempts to collect impermissible fees.[98] Wells Fargo also applied payments in violation of the debtor's confirmed Chapter 13 plan, which increased the interest charged above what was actually due.[99] The court noted that Wells Fargo's actions "resulted in such a tangled mess that neither Debtor, who is a certified public accountant, nor Wells Fargo's own representative could fully understand or explain the accounting offered."[100] In another protracted dispute, a court that initially was concerned about whether Countrywide lacked a basis for a motion for relief from the stay or may have misapplied plan payments eventually heard hours of evidence on the propriety of servicers' and attorneys' practices in bankruptcy cases.[101] The court stated that it was "very disheartened" by the conduct of Countrywide and its attorneys, and emphasized that the court's determination that the standard for sanctions had not been met should not be interpreted as its condoning the servicing practices evidenced in the case.[102]

The misapplication of plan payments purportedly results from the operation of servicers' computer software rather than human intent. Nonetheless, courts have held that the failure to comply with an order of a

96. *In re* Gorshtein, 285 B.R. 118, 126 n.4 (Bankr. S.D.N.Y. 2002).

97. 366 B.R. 584 (Bankr. E.D. La. 2007).

98. *Id.* at 591–98. Perhaps most egregiously, Wells Fargo charged the debtor for sixteen property inspections during the bankruptcy case, but its representative "could not list a single reason why an inspection would have been ordered post-petition, nor could she detail any reason why continuous monthly monitoring of the property was necessary or reasonable." *Id.* at 598, 597–98.

99. *Id.* at 589.

100. *Id.* at 590–91. As a remedy, the court imposed a sanction award of $67,202.45 and ordered Wells Fargo to implement an accurate accounting system for cases in the court's jurisdiction. Jones v. Wells Fargo Home Mortgage (*In re* Jones), Case No. 03-16518, Adv. No. 06-01093, 2007 WL 2480494, at *8 (Bankr. E.D. La. Aug. 29, 2007) (supplemental memorandum opinion).

101. *See In re* Parsley, 384 B.R. 138, 181–82 (Bankr. S.D. Tex. 2008) (criticizing the practices of the servicer and its attorneys but determining that the standard for sanctions had not been met); *In re* Parsley, No. 05-90374, slip op. at 1 (Bankr. S.D. Tex. Feb. 12, 2007) (order requiring Countrywide to appear and show cause) (finding that the servicer and its attorneys failed to sufficiently review the debtor's payment history before filing its motion for relief from the stay, and ordering that representatives of the servicer and its attorneys appear to show cause for why they should not be sanctioned).

102. *Parsley*, 384 B.R. at 183.

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bankruptcy court confirming a plan cannot be excused by the failure to develop appropriate technology.[103]

Some courts also have targeted the creditors' law firms for misbehavior.[104] A New Jersey law firm was fined for filing 250 court pleadings in which the signature page had been pre-signed before review by the servicer.[105] The court's opinion sternly reminds servicers and attorneys that technological "advances" do not absolve the responsible humans of their duties to the court.[106] Another court has observed "instances in which attorneys representing alleged mortgagees or their servicing agents did not know whether the client was a mortgagee or a serving agent, or how their client came to acquire its role."[107] In addition, several class action lawsuits have been filed based on allegedly inappropriate efforts to collect attorneys fees in bankruptcy.[108]

When problems are systemic, private lawsuits may be an ineffective solution. The Federal Trade Commission (FTC) joined the National Consumer Law Center in bringing a class action lawsuit against a large servicer, Fairbanks Capital Corporation, for alleged violations of consumer-protection laws.[109] The lawsuit settled in 2003 after Fairbanks agreed to pay

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103. *See, e.g.*, Payne v. Mortgage Elec. Registration Sys. (*In re* Payne), 387 B.R. 614, 625 (Bankr. D. Kan. 2008) (focusing on the fact that the creditor did not change its accounting when a homeowner filed bankruptcy, and describing how the creditor misapplied the debtor's Chapter 13 plan payments); Nosek v. Ameriquest Mortgage Co. (*In re* Nosek), 363 B.R. 643, 650 (Bankr. D. Mass. 2007) (rejecting computer-software shortcomings as an excuse for failing to correctly apply the debtors' payments).

104. *See, e.g.*, *In re* Allen, No. 06-60121, slip op. at 7–8 (Bankr. S.D. Tex. Jan. 9, 2007) (finding that a large creditor's law firm had filed an erroneous and unsubstantiated objection to a plan's confirmation).

105. *In re* Rivera, 342 B.R. 435, 463–64 (Bankr. D.N.J. 2006).

106. *Id.* at 467; *see also Allen*, No. 06-60121, slip op. at 7 (describing the close relationship between servicers and their "outside" counsel, who receive some pleadings "set up" with data from the servicer's computer system).

107. *In re* Schwartz, 366 B.R. 265, 266 (Bankr. D. Mass. 2007). In *Schwartz*, the "creditor" claimed to have foreclosed before the bankruptcy filing but was ultimately unable to show that it had the right to undertake any foreclosure activity. *Id.* at 269.

108. *See* Harris v. First Union Mortgage Corp. (*In re* Harris), Case Nos. 96-14029-MAM & 00-11321-MAM-13, Adv. No. 99-1144, 2002 Bankr. LEXIS 771, at *10, *13, *30 (Bankr. S.D. Ala. May 10, 2002); Slick v. Norwest Mortgage Inc. (*In re* Slick), Case No. 98-14378-MAM, Adv. No. 99-1136, 2002 Bankr. LEXIS 772, at *11–12, *25 (Bankr. S.D. Ala. May 10, 2002) (both refusing to award attorneys fees to a mortgagee for proof-of-claim-preparation fees that were not fully disclosed to the mortgagor). In Nevada, a proposed class action suit was filed to challenge Ocwen Federal Bank's practice of including a "proof of claim fee" in claims filed in Chapter 13 cases; the case was transferred to the Panel on Multidistrict Litigation and remains pending. *See In re* Dunlap, Case No. 03-14317, Adv. No. 03-1429, slip op. at 1–4 (Bankr. D. Nev. Jan. 26, 2005) (describing the facts of the case).

109. The National Consumer Law Center's Web site lists the *Fairbanks Capital Corp.* case as one of its recent successes and provides the pertinent case documents. Nat'l Consumer Law Ctr., Examples of NCLC's Litigation, http://www.consumerlaw.org/action_agenda/cocounseling/examples_litigation.shtml#fairbanks; *see also* Complaint for Permanent Injunction and Other Equitable Relief and Monetary Civil Penalties at 1–2, United States v. Fairbanks Capital Corp., No. 03-12219 (D. Mass. Nov. 12, 2003), *available at* http://www.consumerlaw.org/initiatives/

$47 million, including funding a $5 million foreclosure-redress fund for consumers who lost their homes in part due to unwarranted charges or difficulties in obtaining information from Fairbanks.[110] Despite this victory, the FTC did not pursue any other major enforcement activities against servicers for several years until it reached a settlement with EMC Mortgage Corporation and its parent company, Bear Stearns, about mortgage-servicing practices that allegedly violated several consumer-protection laws.[111] The U.S. Department of Housing and Urban Development (HUD) also has authority to address servicing misbehavior. It enforces RESPA, which obligates mortgage servicers to provide certain information to homeowners upon receiving a "qualified written request."[112] While a failure to respond to a qualified written request can give rise to a private right of action, there is no empirical evidence on how frequently this law is used to help consumers.[113] Forty percent of consumer complaints to HUD concern servicing issues,[114] yet HUD does not routinely investigate these complaints or collect data from servicers on compliance issues.[115]

In 2007 and 2008, the U.S. Trustee filed several complaints against Countrywide for alleged wrongdoing in servicing bankruptcy cases.[116]

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mortgage_servicing/content/ftc_complaint.pdf (claiming that Fairbanks Capital engaged in "unfair or deceptive acts or practices" in violation of the Federal Trade Commission Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act); First Amended and Consolidated Class Action Complaint at 3, Curry v. Fairbanks Capital Corp., No. 03-10895 (D. Mass. Dec 1, 2003), *available at* http://www.consumerlaw.org/initiatives/mortgage_servicing/content/Consolidated_Class_Complaint.pdf ("Fairbanks has engaged in a nationwide scheme of illegal, unfair, unlawful, and deceptive practices that violate both federal and state law.").

110. *See* Settlement Agreement and Release at 12, 25–27, Curry v. Fairbanks Capital Corp., No. 03-10895 (D. Mass. Nov. 14, 2003), *available at* http://www.consumerlaw.org/initiatives/mortgage_servicing/content/settlement.pdf (providing for the creation of a $40-million-dollar Redress Fund and for additional benefits to class members).

111. *Bear to Pay $28 Million to Settle Loan Complaint*, N.Y. TIMES, Sept. 10, 2008, at C4; *see also* Fed. Trade Comm'n v. EMC Mortgage Corp., No. 4:08-CV-338 (E.D. Tex. Sept. 9, 2008) (stipulated final judgment and order).

112. 12 U.S.C. § 2605 (2006).

113. Consumers themselves, or their attorneys (including bankruptcy attorneys), may not be aware of the law. Also, consumers often do not hire attorneys until foreclosure is imminent, at which time a qualified written request and its sixty-day response window may not be an expedient option.

114. Guttentag, *supra* note 19.

115. For example, on its Web site, HUD lists eight categories of complaints that consumers can file. None of the categories include mortgage servicing. U.S. Dep't of Housing and Urban Dev., Complaints, http://www.hud.gov/complaints (last updated Oct. 6, 2006) [hereinafter U.S. Dep't of Housing and Urban Dev., Complaints]. In addition, HUD does not make available any data sets on mortgage-servicing abuse. *See* U.S. DEP'T OF HOUSING AND URBAN DEV., DATA SETS AVAILABLE FROM HUD USER 4–10, *available at* http://www.huduser.org/Datasets/datasets06.pdf (describing the data sets that are available from HUD).

116. *See* Peg Brickley, *Countrywide Deal with Critic is Disputed*, WALL ST. J., Aug. 11, 2008, at A3 (reporting that the Justice Department has brought actions in Pittsburgh, Atlanta, Ohio, and Florida for purported misbehavior by Countrywide in consumer bankruptcy cases); Carrie Teegardin, *Couple Lose Home in Countrywide Dispute, but May Yet Win*, ATLANTA J.-CONST.,

However, the U.S. Trustee may have limited powers to pursue such remedies. A court has dismissed one of the actions that the U.S. Trustee filed against a mortgage servicer, ruling that the agency does not have the authority to bring legal action to request monetary sanctions against creditors that have engaged in abusive practices.[117] The court also refused to grant the injunction that the U.S. Trustee requested.[118] This decision may undermine the potential of the U.S. Trustee to protect bankruptcy debtors, although other courts have affirmed the right of the U.S. Trustee to participate in litigation that could result in sanctions against creditors for abusive practices.[119] Clearly, the U.S. Trustee does not have regulatory authority to investigate or challenge mortgage-servicing abuse outside the bankruptcy system.

The anecdotal reports of mortgage-servicing abuse are growing, and the cited decisions are quite recent. However, regulatory enforcement remains weak, and cases outside of bankruptcy are exceedingly rare. Given the millions of consumers who may face foreclosure in the next few years,[120] and the hundreds of thousands of homeowners who file for Chapter 13 bankruptcy to save their homes each year,[121] there is a definite need to probe the reliability of mortgage servicing. The harms from poor servicing carry severe consequences, and empirical data can help draw attention to the need to consider how servicing contributes to failed home ownership.

II. Methodology

The Mortgage Study is a large, multistate study of the home loans of families in financial distress. Its principal objective is to create an original database to facilitate new research on the intersection of mortgage lending and bankruptcy. Tara Twomey[122] and I are the principal investigators in the

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Mar. 30, 2008, at 1E (describing the U.S. Trustee's involvement in a Georgia bankruptcy case after the debtor lost her home to foreclosure despite filing for bankruptcy).

117. *See, e.g.*, Walton v. Countrywide (*In re* Sanchez), Case No. 01-042230, Adv. No. 08-1176, slip op. at 5 (Bankr. S.D. Fla. Oct. 2, 2008) (memorandum opinion and order granting Countrywide's motion to dismiss) (holding that the U.S. Trustee does not have authority to "pursue punitive sanctions on behalf of the public by way of an adversary proceeding").

118. *Id.*

119. *See, e.g.*, *In re* Parsley, 384 B.R. 138, 145–47 (Bankr. S.D. Tex. 2008) (finding that the U.S. Trustee acted within its authority in participating in show-cause proceedings against a mortgage servicer and its attorneys); *see* 11 U.S.C. § 307 (2006) (granting wide authority to the U.S. Trustee in bankruptcy cases).

120. Press Release, Pew Charitable Trusts, 1 in 33 Homeowners Projected to Be in Foreclosure Within the Next Two Years (Apr. 16, 2008), *available at* http://www.pewtrusts.org/news_room_detail.aspx?id=37950.

121. Ben Rooney, *Bankruptcy Filings Surge to 1 Million—Up 29%*, CNNMONEY.COM, Aug. 27, 2008, http://money.cnn.com/2008/08/27/news/economy/bankruptcy/.

122. When the study began, Tara Twomey was a clinical instructor at Harvard Law School. She is currently a Lecturer in Law at Stanford Law School and a consultant for the National Association of Consumer Bankruptcy Attorneys and the National Consumer Law Center. Neither organization had any involvement in this research.

Mortgage Study, which was funded by the National Conference of Bankruptcy Judges' Endowment for Education.[123]

The Mortgage Study sample contains 1,733 Chapter 13 bankruptcy cases filed by homeowners. The sample includes cases from forty-four judicial districts in twenty-three states and the District of Columbia, which represented 61% of all Chapter 13 cases filed in 2006.[124] The sample captures variations in local bankruptcy practices and represents all large mortgage lenders and servicers. In each district, the sample was constructed by selecting every fifth case filed in April 2006 in which the debtor owned a home.[125] If a case was converted from another chapter or if the debtor did not own a home, that case was excluded and the next case that met the selection criteria was included in the sample. Thus, the sample roughly reflects the proportional size of Chapter 13 filings among all judicial districts in the sample.[126]

The sample is not representative of all homeowners in bankruptcy for two reasons. First, the sample includes only Chapter 13 bankruptcy cases and excludes Chapter 7 cases. Prior studies have confirmed that the percentage of homeowners in Chapter 13 bankruptcy is much higher than in Chapter 7 bankruptcy.[127] The exclusive focus on Chapter 13 enhances the data's usefulness to examine bankruptcy as a home-saving device.[128] Chapter 13 is particularly attractive to homeowners who are in default on their mortgage loans because it permits them to retain their homes by curing arrearages over time through repayment plans.[129] Although the data are only

123. The Endowment for Education is a nonprofit and nonpartisan organization. In funding the grant, the Endowment does not endorse or express any opinion about the methodology utilized, any conclusions, opinions, or results contained in this Article, or any other findings based on the research funded by the Endowment.

124. Am. Bankr. Inst., Annual Non-business Filings by Chapter (2000–2006), http://www.abiworld.org/AM/AMTemplate.cfm?Section=Home&CONTENTID=47461&TEMPLATE=/CM/ContentDisplay.cfm

125. All homeowners were included in the sample, regardless of whether they had mortgages. In the sample, 96% of homeowners had outstanding mortgage debt when they filed bankruptcy.

126. For example, the sample contains only two cases from Wyoming, a district with few Chapter 13 filings. At the other extreme, the sample contains 164 cases from the Northern District of Georgia because that district has a large number of Chapter 13 cases.

127. Data from the Consumer Bankruptcy Project III (CBP) indicate that home ownership is much more prevalent among Chapter 13 debtors than Chapter 7 debtors. In the CBP's core sample of 1,250 cases filed in 2001 in five judicial districts, 30% of Chapter 7 cases were filed by homeowners. In contrast, 75% of Chapter 13 debtors owned their homes when they filed bankruptcy. The CPB data are on file with the author.

128. Scarce data exist on how homeowners fare in bankruptcy. *See* Melissa B. Jacoby, *Bankruptcy Reform and Homeownership Risk*, 2007 U. ILL. L. REV. 323, 345 ("Although scholars of mortgage debt and foreclosure generally are aware that some bankruptcy filers own homes, chapter 13's specific anti-foreclosure function has not received sufficient scholarly attention."). The most extensive study to date was based on cases filed in 2001 and did not rely on proofs of claim or home-loan documents. *See* Bahchieva et al., *supra* note 1, at 94 (detailing the sources of data collected for the 2001 study).

129. *See* 11 U.S.C. § 1322(b)(3), (b)(5) (2006) (providing for a bankruptcy-repayment plan to cure a default on a debtor's primary residence).

from Chapter 13 cases, the rules and procedures to ensure accurate bankruptcy claims are identical for Chapter 7 cases.[130] However, mortgage claims are much less frequently filed in Chapter 7 cases because there are fewer homeowners who file Chapter 7, and also because Chapter 7 does not offer the remedies to homeowners in default that Chapter 13 does.[131]

Second, the sample was drawn only from districts where the applicable state law permits nonjudicial foreclosures of debtors' principal residences.[132] We limited the sample in this way because the more favorable remedies available to mortgagees in nonjudicial-foreclosure states may reduce servicers' incentives to negotiate with consumers after default. That is, because nonjudicial foreclosure is faster and less expensive for creditors than judicial foreclosure,[133] debtors may have a greater need to file bankruptcy in nonjudicial-foreclosure states to contest a foreclosure. Restricting sampling to states that permit nonjudicial foreclosure probably boosted the proportion of homeowners in default on mortgage loans in the sample. Nevertheless, because bankruptcy law is uniform nationally on the requirements for proofs of claim and the rights of homeowners with mortgages in default, a random national sample, including judicial-foreclosure states, may not produce different data.[134]

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130. *See, e.g.*, FED. R. BANKR. P. 3001 (describing the procedures for claims, without differentiation for various chapters of bankruptcy relief).

131. *See* Jacoby, *supra* note 128, at 327–28 (reviewing the additional legal tools available to defaulting mortgage borrowers filing under Chapter 13 as compared to Chapter 7).

132. Our sample represents 49% of the judicial districts in the United States. The sample includes twenty-three states in addition to the District of Columbia: Alabama, Arkansas, California, Colorado, Georgia, Idaho, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, North Carolina, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

133. *See* BARLOW BURKE, REAL ESTATE TRANSACTIONS 336 (4th ed. 2006) (discussing nonjudicial power-of-sale foreclosure and stating that it is both cheaper and faster than judicial foreclosure); GRANT NELSON & DALE WHITMAN, REAL ESTATE FINANCE LAW 636 (5th ed. 2007) (characterizing the rationale of power-of-sale foreclosure as removing the "substantial additional burdens" of judicial foreclosure). Judicial foreclosure procedures vary depending on state law. Typically these steps include the filing of a lawsuit and a judgment, followed by a court order authorizing a judicial sale conducted pursuant to statutory procedures. BURKE, *supra*, at 334. Nonjudicial foreclosure typically proceeds under a deed of trust that permits a third-party trustee, upon default, to sell the property in a private sale. *See id.* at 336 (identifying the deed of trust as "the more commonly used form of security instrument" in a power-of-sale foreclosure, and noting that the individual conducting the sale under this system will usually be a trustee). Although some public notice is required by all states, a nonjudicial foreclosure, as its name suggests, does not require court supervision or the filing of a lawsuit. *See id.* at 337 (describing how a power-of-sale foreclosure relieves mortgagees of the burden of initiating litigation to enforce a lien).

134. For those cases in which a foreclosure was filed before bankruptcy, it is possible that in judicial-foreclosure states the lenders were more likely to have retained attorneys before the bankruptcy than in nonjudicial-foreclosure states. It is unclear if such attorney involvement would result in more complete or accurate bankruptcy pleadings.

Data were drawn from the public court records filed in each case.[135] Like other leading studies of consumer bankruptcy, we coded data from debtors' schedules.[136] Filed under penalty of perjury, these schedules may provide more complete and reliable evidence of debtors' financial situations than survey or interview methods.[137] For each case, we coded the debtor's income; the debtor's valuation of the home; and any information about mortgage obligations on the debtor's principal residence,[138] including total debt, any arrearages, and the amount of monthly payments.[139]

The innovation of the Mortgage Study was to code mortgage creditors' proofs of claim and supporting documentation. These files give more information on home loans than is available from debtors' schedules. Data came from four documents, when available: (1) the proof of claim itself; (2) an itemization of the amount claimed; (3) a copy of the mortgage that secured the obligation; and (4) a copy of the note evidencing the debt. From these documents, we coded the type and terms of each loan; the names of the mortgagee, originating lender, and servicer; the amount of the initial

135. Most documents were obtained from the Public Access to Court Electronic Records (PACER) service. We thank the chief judges of each district in the Mortgage Study, with the sole exception noted below, for granting us a research waiver of PACER fees. The Southern District of Texas denied our application for a fee waiver, stating that it had a blanket policy against such waivers, notwithstanding the written policy of the Judicial Conference of the United States that individual researchers associated with educational institutions are eligible for waivers if they can show cause. *See* U.S. Judicial Conference, Electronic Public Access Fee Schedules, (effective Mar. 11, 2008), *available at* http://pacer.psc.uscourts.gov/documents/epa_feesched.pdf. When PACER did not appear to contain complete court files, we obtained paper records. For example, in the Eastern and Middle Districts of North Carolina, proofs of claim are not available on PACER. We thank Edward Boltz, of the Law Offices of John T. Orcutt, and Reid Wilcox, Clerk of the Bankruptcy Court for the Middle District of North Carolina, for their help in obtaining these documents.

136. *See* Culhane & White, *supra* note 42, at 767 (mentioning that their study data included information from debtors' Schedule I and J filings); Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473, 486 n.25 (2006) (identifying their data as collected from debtors' Schedule I filings); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 STAN. L. REV. 213, 219 (2006) (describing financial data used in the study as drawn from "schedules filed with the court").

137. *See* MANN, *supra* note 25, at 61 (suggesting that one of the problems with the Federal Reserve's Survey of Consumer Finance data is that those surveyed often underreport their spending); David B. Gross & Nicholas S. Souleles, *Do Liquidity Constraints and Interest Rates Matter for Consumer Behavior?: Evidence from Credit Card Data*, 117 Q.J. ECON. 149, 151 n.2 (2001) (asserting that a 1995 survey understates household borrowing on bankcards because survey participants "substantially underreport their bankcard debt").

138. Real property that was not the debtor's principal residence was ignored, as were any corresponding proofs of claim for such properties. No debtor in the sample was permitted to have more than one principal residence.

139. We coded data from each debtor's docket; petition; Schedules A, C, D, I, and J; Form B22; and Chapter 13 plan. These documents were available and complete in over 99% of sampled cases; there are very few missing observations. We coded only the original version of the schedules, including any separate or later filed schedules that were not included in the original schedules. We did not code amendments to schedules because we were interested in the debtors' initial ability to gauge the amount of their mortgage debts.

mortgage debt; and the amount of mortgage debt, including arrearages, when the bankruptcy was filed. We also coded any objections to mortgage creditors' proofs of claim and any amended claims. For cases with only one mortgage loan, we coded 152 data points; when debtors had more loans, there were more data points to capture.[140] Combining data from creditors' and debtors' pleadings, the Mortgage Study database offers a rich and detailed picture of bankrupt families' mortgages.

Data were coded into a specially designed database. We deployed several standard procedures to ensure the data's accuracy. First, if the initial coding, which occurred six months after a case's filing, did not locate a mortgagee's proof of claim or an objection to any filed proof of claim, we rechecked the court records a year later to locate any records that were filed later or were missed in the initial coding. These were added to the database. To reduce concerns about coding reliability, we used only three coders, each of whom either has a law degree or prior experience on academic bankruptcy projects. All coders received individual training on practice cases to develop consistent coding practices. Coders referred to a written manual while coding and noted any unusual situations or questions. We individually reviewed the coding in each of these flagged cases. We also performed two types of error checks on the data. First, we ran error traps to improve the accuracy of the database and corrected any identified errors.[141] Second, a random sample of 10% of the cases—approximately 175 cases—was recoded blindly, without reference to the prior coding. We then compared each variable of each case between the initial coding and the recoding, noted any discrepancies, and checked for mistakes in the initial coding. The data were 99% accurate, and no systematic errors were identified between coders.[142]

The final data were transferred to Microsoft Excel and SPSS for Windows for analysis. All dollar figures are presented as reported in court records without adjustment for inflation.

III. Findings

The Mortgage Study data permit multiple analyses of the reliability of mortgage claims. The overall pattern of findings is disturbing. Many creditors do not comply with applicable law governing claims. Routinely, fees are not identified with specificity, making it impossible to determine if these charges are legal. In most instances, mortgagees believe the debt is

140. The exact number of data points actually coded varied across cases based on several factors, including the number of home loans, the type of loan, and the quantity of documentation attached to the proof of claim.

141. Two examples illustrate this type of check: (1) we reviewed any proof of claim dated before April 2006, when the cases were filed; and (2) we checked for any dollar figures that began with a decimal point or exceeded $1 million.

142. The error rate was 1.04%. To calculate the error rate, we compared the original coding to the recoding, determined the number of errors in the initial coding, and divided this number by the number of data points.

greater than debtors do; these differences typically represent thousands of dollars. Yet, creditors are rarely called to task for these behaviors. The vast majority of all claims (96%) pass undisturbed through the bankruptcy system without objection. Attorneys do not aggressively enforce their clients' rights against mortgage companies because the costs are too high and the incentives are too low in the current system. The combination of the widespread deficiencies in claims and the lack of objections weakens the integrity of the bankruptcy process and can harm both debtors and other creditors by skewing distributions in favor of mortgage creditors.

A. Required Documentation for Mortgage Claims

Mortgage creditors who want to receive distributions from the bankruptcy estate for mortgage arrearages must file a proof of claim.[143] In the Chapter 13 cases in the sample, mortgage creditors filed proofs of claim to correspond with 81.7% of the home loans that debtors listed on their bankruptcy schedules.[144]

Creditors who file claims are required to use Official Form 10 or a similar document that substantially conforms to the form.[145] Form 10 directs creditors to attach an itemized statement if their claim "includes interest or other charges" in addition to the principal amount.[146] This requirement would apply to nearly all typical mortgage claims, as these obligations bear interest. Federal Rule of Bankruptcy Procedure 3001 imposes two additional evidentiary requirements on proofs of claim:[147] (1) a copy of the writing if one evidences the claim,[148] and (2) evidence of perfection if the creditor asserts a security interest in the property of the debtor.[149]

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143. *See* Official Bankruptcy Form 10 (2007), *supra* note 41 (requiring a creditor who fills out a proof of claim for a secured claim to state the value of property that is collateral for the debt, attach copies of documentation of the lien, and state the amount past due on the claim (the arrearage) as of the date the bankruptcy case was filed). Note that the proof-of-claim form has been amended slightly and that the new version will go into effect in December 2008. *See* Official Bankruptcy Form 10 (2008), *available at* http://www.uscourts.gov/rules/BK_Forms_Pending_2008/B10_Form10_1208.pdf.

144. As noted in Part II (Methodology), we checked for proofs of claim at two points—six months after each case's filing date and over one year after each case's filing date—to ensure the completeness of the proof-of-claim data. For a discussion of mortgagees' incentives to file claims, see *supra* text accompanying notes 41–46.

145. FED. R. BANKR. P. 3001(a).

146. Official Bankruptcy Form 10 (2007), *supra* note 41.

147. It is possible that a single, integrated document could perform the function of both the note and the mortgage in creating the parties' rights and obligations in the transaction. We did not identify such instances in the sample. Because consumer home loans are typically intended for sale on the secondary market, separation of the note and the mortgage helps ensure that the note is a negotiable instrument that will be subject to the holder-in-due-course defense upon transfer.

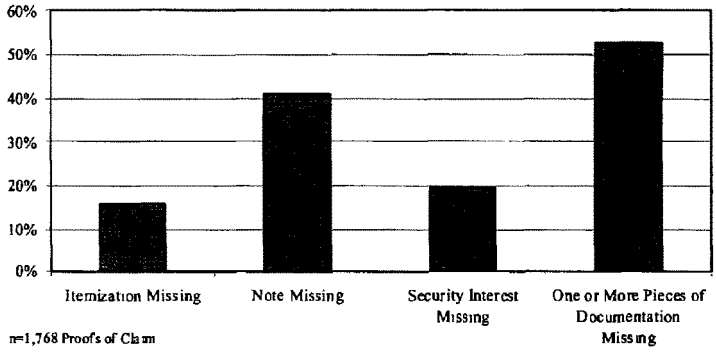
148. FED. R. BANKR. P. 3001(c) ("When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim.").

149. *Id.* 3001(d) ("If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.").

Requiring this trio of documentation (itemization, note, and mortgage) permits all parties in a bankruptcy case—debtor, trustee, and other creditors—to ensure the accuracy and legality of the claim. Without documentation, parties cannot verify that the claim is correctly calculated and that it reflects only amounts due under the terms of the note and mortgage and permitted by other applicable law.[150] A lack of documentation hampers efforts to ensure that any payments on mortgage claims are made in accord with the Bankruptcy Code.

The documentation requirements for mortgage proofs of claim are unambiguous and long-standing.[151] Nevertheless, these laws are not consistently respected. A majority of claims (52.8%) lacked one or more required attachments. Figure 1 illustrates the findings for mortgagees' proofs of claim on loans secured by a debtor's home.[152] The data show that in a majority of instances mortgagees do not provide the required documentation.

Figure 1: Percentage of Proofs of Claim
Missing Required Documentation



A majority of claims (83.9%) had the itemization attached to them. Despite the applicable, clear instruction on Form 10, the remaining claims (16.1%) did not have any itemization attached. For the one in six claims not

150. For example, some states have specific laws that govern foreclosure costs and fees. *See, e.g.*, MICH. COMP. LAWS § 600.2431 (2007) (capping attorneys fees in a nonjudicial foreclosure at no more than $75 if the mortgage does not specifically contract for such attorneys fees).

151. *See, e.g.*, FED. R. BANKR. P. 3001 advisory committee's notes (indicating that the requirements for mortgage proofs have remained largely identical since at least 1983).

152. These data come from the proof of claim initially filed in each case and do not reflect any attachments that may have been added if mortgagees filed amended claims. The purpose here is to measure compliance with the clear obligations of the rules in the first instance, not to determine whether creditors responded if a party objected or requested information.

supported by an itemization, the debtor and other parties are unable to discern the specific bases for the creditor's asserted right to be paid the total amount of the claim. Further, the usefulness of these itemizations varied greatly.[153]

The most fundamental piece of evidence to support a claim is a copy of the promissory note or instrument establishing the existence and terms of the debt. A note is necessary to establish the existence of a debt, its key terms, and the creditor's standing to collect the debt. Despite its importance, a note was not attached to 41.1% of claims.

The finding that four out of ten claims were not supported by a note is troubling for several reasons. First, the note is not easily available from another source. Unlike mortgages, notes are not recorded in public records. If the debtor does not have a copy of the note, and the servicer does not provide one, the servicer has an informational advantage, which Rule 3001 was presumably designed to eliminate. Next, the promissory note or other debt instrument is absolutely necessary to enable the debtor, trustee, and other creditors to verify that the amount asserted as owed on the proof of claim is correct. The note contains the initial account balance, the applicable interest rate, and the terms that govern the mortgagee's ability to charge fees upon default.[154] In subprime loans, such terms are nonstandard and may vary widely, increasing the importance of having a copy of the note. Third, a copy of the note is necessary to trace the ownership of the obligation and to ensure that a creditor has standing to bring an action to collect from a debtor. As an avalanche of securitized home loans have entered default in the last year, courts have become frustrated at the difficulty in determining the chain of title of the note.[155] Finally, Rule 3001(c)'s requirement that a copy of a writing be attached applies widely. Nearly all debts are evidenced by writing in today's commercial economy. Yet, even when the claim is for a large debt such as a mortgage, creditors do not comply with the proof-of-claim rules.

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153. *See infra* subpart III(B).

154. In most instances, the note contains broad language on charges and costs. For example, the Fannie Mae uniform instrument gives the noteholder a "right to be paid back by [the borrower] for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees." Fannie Mae, Multistate Fixed-Rate Note—Single Family 1 (instrument revised Jan. 2001), *available at* https://www.efannie mae.com/sf/formsdocs/documents/notes/pdf/3200.pdf. Even under this broad language, debtors may have challenges to the mortgagees' claims. For example, they could contest the "reasonableness" of asserted attorneys fees or argue that the language on "costs and expenses" is modified by "enforcing this Note" so that costs such as fax fees cannot be justified by this provision.

155. *See* Nosek v. Ameriquest Mortgage Co. (*In re* Nosek), 386 B.R. 374, 383–85 (Bankr. D. Mass. 2008) (imposing monetary sanctions on Ameriquest, Wells Fargo, and several attorneys for misrepresenting the identity of the holder of the note in bankruptcy proceedings); *see also In re* Foreclosure Cases, 521 F. Supp. 2d 650, 654 (S.D. Ohio 2007) (dismissing foreclosure cases for lack of standing when ownership of the note was not established).

The mortgage data hint that compliance with Rule 3001(c) may be even worse for smaller claims evidenced by a writing, such as credit-card debts.[156]

Creditors were more diligent about attaching documentation to prove a valid security interest in the debtor's home. A perfected security interest such as a copy of a recorded mortgage or deed of trust accompanied 80.4% of mortgagees' proofs of claim. As shown in Figure 1, 19.6% of claims were not supported by a security interest to document the creditor's lien in the debtor's home. In light of the dismal compliance on attachment of notes, it may be tempting to view this finding on security interests as a relative success that may not merit policy attention. However, several risks are created when creditors do not prove a valid security interest.

The first potential harm is to the integrity of the bankruptcy system. The data show that nearly one in five mortgagees ignores a clear disclosure rule when they participate in a bankruptcy case. With much less evidence of misbehavior by debtors,[157] Congress imposed audits on debtors' schedules to ensure full disclosure of assets[158] and permitted dismissal of debtors' cases as a penalty for failing to provide documentation.[159] These laws evidence Congress's belief that bankruptcy is a serious and important process and that full disclosure is necessary to preserve the system's integrity. Creditors who make affirmative filings to a court, such as a proof of claim, also affect public confidence in the integrity of the bankruptcy system.[160] The failure of approximately 20% of creditors to attach security interests to their claims damages the structural integrity of the process to ensure that claims are accurate and that all assets are distributed according to bankruptcy law and procedure.

The second reason that the finding on attachment of mortgages is troubling results from the serious distributional consequences to all parties in

156. *See* John Rao, *Debt Buyers Rewriting of Rule 3001: Taking the "Proof" Out of the Claims Process*, AM. BANKR. INST. J., July–Aug. 2004, at 16, 16 (stating that Rule 3001 supporting documents are not provided to purchasers of credit-card debt).

157. *See* Steven W. Rhodes, *A Preview of "Demonstrating a Serious Problem with Undisclosed Assets in Chapter 7 Cases,"* NORTON BANKR. L. ADVISER, May 2002, at 1, 1–2 (finding in a one-district sample that 70% of asset cases—a small fraction of all Chapter 7 cases generally—contained undisclosed or undervalued assets in the debtors' lists of assets and valuations); *see also* Edith H. Jones & James I. Shepard, *Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners*, *in* REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION 1029, 1057–58 (1997), *available at* http://govinfo.library.unt.edu/nbrc/report/ 24com mvi.pdf ("The Commission repeatedly heard testimony that the information reported in the debtors' schedules is often unreliable.").

158. Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005, Pub. L. No. 109-8, § 603, 119 Stat. 23, 122 (codified at 11 U.S.C. §§ 521, 727 and 28 U.S.C. § 586 (2006)) (authorizing random audits of debtors).

159. *Id.* § 316, 119 Stat. at 92 (codified at 11 U.S.C. § 521(i)) (automatically dismissing a bankruptcy case if the debtor does not provide required information, such as payment advices).

160. Because debtors almost always affirmatively seek bankruptcy relief, it may be fair to impose increased burdens for disclosure on them as the "moving party." Nonetheless, creditors who participate in cases also submit themselves to federal process and should be required to comport with the rules that govern their actions in bankruptcy cases.

a bankruptcy if a mortgagee cannot prove it holds a valid security interest. Under bankruptcy law, a mortgage that is not properly perfected can be avoided.[161] Avoidance typically relegates the obligation to unsecured status in bankruptcy and significantly reduces the debtor's obligation to pay the full amount of the debt.[162] Even a credible threat of avoidance could cause an allegedly secured party to lower its claim to prevent the risk of litigating its secured status. Thus, the ability to challenge whether a mortgage is properly perfected redounds to the benefit of both the debtor and to all unsecured creditors, whose distributions from the bankruptcy estate will be higher if the mortgage is not entitled to treatment as a secured claim. In light of these very powerful benefits, the rate of noncompliance is alarming. The failure to attach a security interest should serve as a red flag that prompts scrutiny of the claim. While some trustees or debtors may themselves be checking the public records to determine if the creditor holds a valid mortgage, this state of affairs effectively reflects creditors' ability to shift the burdens of their disclosure duties onto other parties in the system. The law requires creditors to prove that they are entitled to preferential treatment as secured creditors;[163] their failure to do so creates a risk that some creditors who may not in fact have valid mortgages will receive higher payments than they are entitled to under the law.[164]

Finally, the security interest is necessary for the same reason as the note: it contains the terms that bear on the calculation of the amount owed. Further, the mortgage usually contains provisions on how a loan should be serviced. For example, in most states the model Fannie Mae instrument requires the lender to either apply or refund partial payments within a

161. 11 U.S.C. § 544 (2006). This provision is commonly called the "strong arm" power because it permits the trustee to "knock off" security interests that are not properly perfected under state law to defeat certain other types of creditors.

162. *See* WARREN & WESTBROOK, *supra* note 2, at 478 (explaining that a creditor in an avoidance action "may face the loss of its security interest or an order requiring it to pay back amounts it received from the debtor shortly before bankruptcy"); *id.* at 285 ("Just as secured creditors in Chapter 7 enjoy enhanced status and are entitled to greater repayment than unsecured creditors, the secured creditor in Chapter 13 enjoys substantially better protection than the unsecured creditor."). Without a security interest, the mortgage is an unsecured obligation. Thus, the house is immediately available to the debtor as an asset to use as collateral. After committing all disposable income for the applicable commitment period in the Chapter 13 case, a debtor then may discharge any remaining obligation on the mortgage claim because it is an unsecured debt. The combination of avoiding a security interest and completing a Chapter 13 plan results in the debtor owning the house free and clear.

163. FED. R. BANKR. P. 3001(d).

164. In addition to the failure to properly perfect the mortgage by complying with state recording statutes, some trustees who routinely demand and scrutinize mortgage documents have identified other errors that invalidate a mortgage (such as the failure of a notary to witness the mortgage). *See, e.g.*, *In re* Fisher, 320 B.R. 52, 65 (E.D. Pa. 2005) (holding that a bankruptcy trustee may avoid a mortgage under 11 U.S.C. § 544 on the basis that it was improperly proved and recorded); *In re* Marsh, 12 S.W.3d 449, 454 (Tenn. 2000) (ruling that, under Tennessee law, a deed of trust that lacks a notary seal acknowledging execution is invalid as a lien).

"reasonable period of time."[165] Based on this language, a debtor could challenge a servicer's practice of holding payments for extended periods, usually by placing the funds in "suspense accounts" and by not applying the payment to the debtor's obligation.

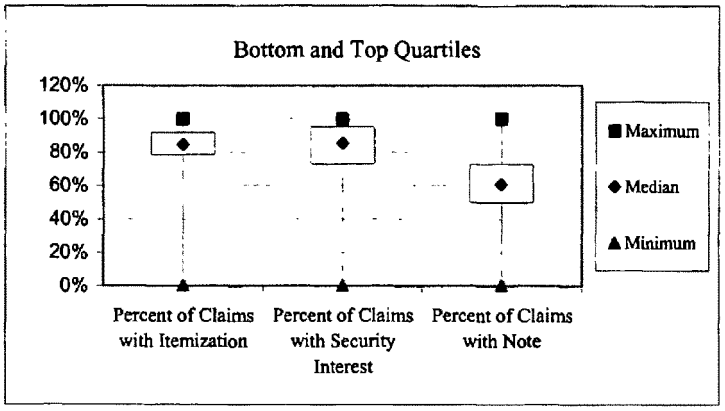
Mortgagees' compliance with the documentation requirements for claims varied among judicial districts. Figure 2 shows the variation among districts for the three types of claims documentation.[166] The boxes in Figure 2 demarcate the middle two quartiles of documentation compliance. The bottom of each box shows the percentage of attached documentation in the district that was at the first quartile (i.e., 25% of districts had worse compliance). The top of each box shows the percentage of attached documentation in the district that was at the top quartile (i.e., 75% of districts had worse compliance). The diamond in the middle of each box shows the rate of attached documentation in the median district.

The relatively small heights of the boxes in Figure 2 indicate that most jurisdictions do not approach full compliance with documentation requirements. The overall pattern of findings is not driven by outlying districts with very poor compliance. Even in the districts that boast compliance that is better than the other three quartiles of districts, the fraction of claims without documentation is significant. The problem is particularly acute with respect to mortgagees' failure to attach notes. Among the districts with the worst compliance (those in the bottom quartile), the percentage of claims with a note attached was 50% or lower, ranging all the way to zero complying claims. In these jurisdictions, a majority of claims will not be supported by copies of the notes.

165. To access the Fannie Mae/Freddie Mac uniform instruments for each state, see Fannie Mae, Legal Documents—Security Instruments, https://www.efanniemae.com/sf/formsdocs/documents/secinstruments/#standard [hereinafter Fannie Mae Standard Instruments]. To access the standard instrument for a particular state, follow the hyperlink in the *Standard.doc* column in the *Standard Instruments* table. Note that the standard instrument for Maine does not include "reasonable period of time" language, and the standard instrument for New Jersey requires the lender to immediately apply any payments it accepts. *Id.*

166. The top and bottom of the vertical lines in Figure 2 show that there was at least one district in which no claims (0%) had a required type of documentation and at least one district in which all claims (100%) had a required type of documentation. These findings largely result from the presence in the sample of some districts with very few cases. Because the addition of a single case could dramatically change the compliance rate in those districts, the absolute range of compliance is not very useful. Thus, the data on interdistrict variation are best used to observe a general pattern, as shown by the quartile findings.

Figure 2: Variation Among Judicial Districts in Attached Documentation



The variation among districts reinforces concerns about uniformity, a feature of bankruptcy law that is explicit in the U.S. Constitution's Bankruptcy Clause.[167] While uniformity challenges to bankruptcy law have had little success,[168] the variations in claims documentation reveal systematic differences based on where a debtor files for bankruptcy. While the law is identical, the realities of compliance vary among judicial districts. Proofs of claim are another example of a "local legal culture" effect in bankruptcy.[169] To the extent that uniformity is crucial to ensure the integrity of the bankruptcy system, creditors' inconsistent compliance with claims procedures is troubling. Depending on the place of residence, debtors and their counsel receive varying amounts of information about mortgage obligations.

The data on proofs of claim show that in at least one important respect creditor behavior is not uniform, and that the reality of practice does not match the clear requirements of the law. Despite long-standing and unambiguous documentation rules that apply in all bankruptcy cases, most mortgage proofs of claim lack one or more pieces of documentation. This pattern of noncompliance undermines the purpose of the proof-of-claim rules and effectively shifts the burden to verify the accuracy of claims to debtors or

167. *See* U.S. CONST. art. I, § 8, cl. 4 (stating that Congress has the power "to establish . . . uniform laws on the subject of bankruptcies throughout the United States"). *See generally* Erwin Chemerinsky, *Constitutional Issues Posed in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 571, 592–94 (2005) (discussing the effect of the uniformity requirement in the Bankruptcy Clause and the judicial interpretations of what constitutes uniformity).

168. *See* Chemerinsky, *supra* note 167, at 592–94 (cataloging unsuccessful challenges under the uniformity requirement).

169. *See supra* note 46 (describing other local-legal-culture effects in bankruptcy).

trustees. Undocumented or insufficiently documented claims create obstacles to ensuring that mortgage creditors are paid in accordance with the law. At worst, creditors' failure to provide documentation can manipulate the bankruptcy system to overpay on these obligations, harming the debtor and all other creditors.[170] The requirements for claims documentation should be consistently respected and enforced to prevent these harms.

B. Default Fees in Mortgage Claims

Itemizations were the most common form of documentation attached to claims. The prevalence of itemizations, however, is a misleading cue as to their usefulness in ensuring the accuracy of mortgage claims. Two major problems undermined the itemizations' use as a tool to evaluate the propriety of a creditor's claim. First, there is no standard form for itemizations. Even with a single servicer or attorney, the itemization format and amount of detail varied.[171] Without a standard format, itemizations cannot be reviewed using a semiautomated or routine process. In high-volume systems such as the consumer bankruptcy system, the result is to dramatically limit the scrutiny of claims. To make affordable services available to debtors, the consumer attorney has to employ standardized procedures that can be applied in hundreds of cases a year. Trustees are similarly bound by cost and efficiency concerns.[172] The wide variation in the form of itemizations means that debtors and trustees will be severely hampered in reviewing and objecting to claims. The result is a system that does not ensure that even obvious mistakes or overcharges in claims will be reviewed and objections will be filed, if appropriate.

The second, and related, problem is the tremendous variation in the quantity of detail provided on itemizations. Some "itemizations" contain so little detail as to be a perversion of the proof-of-claim form's use of that term to describe the attachment. In a few instances, the itemization simply consisted of a breakout of the amount of arrears that was part of the

170. *See In re* Wingerter, No. 06-50120 (Bankr. N.D. Ohio Oct. 1, 2007) (opinion resolving a show-cause order) ("A policy of filing a proof of claim without having possession of the supporting documents, but withdrawing the claim if the debtor subsequently files an objection to the claim's validity smacks of gamesmanship and creates an unacceptable risk that distributions to other creditors will be unfairly reduced.").

171. In some districts, the variation was obviously due to the differing practices of the attorneys hired to represent the servicer. In other instances, however, the same attorney filed proofs of claim in several different formats, probably reflecting the fact that the servicer itself is preparing the proof of claim and merely transmitting it to the attorney for review and filing with the court.

172. *See* 11 U.S.C. § 704(1) (2006) (prescribing that the trustee shall "close such estate as expeditiously as is compatible with the best interests of parties in interest"). A trustee is potentially subject to liability to the creditors for failing to close an estate in a cost-efficient manner. *See In re* C. Keffas & Son Florist, Inc., 240 B.R. 466, 474 (Bankr. E.D.N.Y. 1999) ("If the trustee fails to make this necessary cost–benefit analysis, then the trustee will necessarily breach the statutory mandate under 11 U.S.C. § 704(1), and incur a liability for the damages unjustifiably imposed upon the creditors . . . .").

creditor's total claim. Since the proof-of-claim form itself already requires that information,[173] the itemization added nothing to the one-page claim form itself. Other creditors merely listed three categories: the total amounts of principal, interest, and "other/miscellaneous."

To analyze the variation in detail, the Mortgage Study coded all the itemization detail into several categories based on the types of charges that debtors allegedly owe.[174] Despite using the servicing industry's own categories,[175] 43% of itemizations either made reference to fees that did not fit one of the dozen specific categories or proffered an aggregate sum of many types of varying charges that could not be separated. One common technique was the use of a temporal category that did not provide any legal basis for the permissibility of the charges. For example, several itemizations labeled charges only as "pre-petition," without identification of whether these amounts resulted from missed payments, default charges, or accrued interest.[176] Among claims with debt identified only as pre-petition, the average of this type of debt was $1,651, a fairly substantial sum without any specific basis. Another common label was "prior/previous servicer," which again does not pinpoint the basis for the charges or permit any examination of whether the amount claimed is correct. Perhaps most egregiously, some amounts were labeled merely "other" or included in a column of summed figures with absolutely no description at all.[177] These vague or temporal descriptions do not meet the requirement of Form 10 to itemize any additional charges and do not permit meaningful review of the accuracy or legality of servicers' calculations of debt.

The itemizations were plagued by another troubling feature: the use of laundry-list descriptions. The most common such label in the sample was "Inspection, Appraisal, NSF, and other charges."[178] Over thirty proofs of claim used that recitation with the words in that order and no additional breakdown of fees in that line item. For this description to be literally

173. Official Bankruptcy Form 10 (2007), *supra* note 41.

174. Each charge was categorized as one of the following: principal, interest, escrow, late charges, foreclosure fees or costs, nonsufficient funds charges, property inspection fees, broker price opinions or appraisals, corporate advances, post-petition fees, suspense funds, or other. The last category was residual and used when the charge did not fit another category or the fees were not broken out into one of the above categories.

175. The categories set out above, *supra* note 174, are consistent with those on the Model Proof of Claim itemization developed by a joint committee of Chapter 13 trustees and mortgage servicers. *See* NAT'L ASS'N OF CHAPTER 13 TRUSTEES MORTGAGE COMM., MODEL PROOF OF CLAIM ATTACHMENT 2–3 (2007) [hereinafter MODEL PROOF OF CLAIM ATTACHMENT]. This model proof of claim attachment was included in a 2007 report issued by the National Association of Chapter 13 Trustees Mortgage Committee. NAT'L ASS'N OF CHAPTER 13 TRUSTEES, REPORT OF MORTGAGE COMMITTEE (2007) [hereinafter REPORT] (on file with the Texas Law Review).

176. Charges or amounts labeled merely as pre-petition were identified in sixty-three claims, fewer than 5% of all claims. This count excludes any fees labeled as "pre-petition attorneys' fees."

177. For example, one claim's "itemization" listed $5,391 described only as "other." Another claim requested $3,023 for "delinquency expenses."

178. "NSF" stands for nonsufficient funds.

accurate, the servicer should have actually conducted an inspection and an appraisal, one or more of the debtor's payments should have been returned for nonsufficient funds, and the debtor should have engaged in some other behavior that resulted in a permissible charge. While plausible, the laundry-list description with its inclusion of "other charges" suggests that servicers are taking shortcuts in describing the actual fees that debtors owe.

The poor quality of itemizations causes real harms. First, confidence in the bankruptcy system is undermined when the quality of information provided does not satisfy the rules designed to ensure fair claims distribution. Vague or laundry-list descriptions do not satisfy the instructions on the proof-of-claim form, which were written to balance the rights and needs of debtors and creditors. Second, without a true itemization that identifies the nature of each fee, parties cannot verify that a mortgage claim is correctly calculated. The servicer could have made a mistake when aggregating fees and charges. Alternatively, the servicer could be overreaching and charging fees that are not permitted by law or by the terms of the contract. The case law described in Part I shows that when courts scrutinize the nature of mortgage claims, they frequently find evidence of servicer misbehavior.[179] Yet, the itemizations do not provide sufficient information to permit a review of the charges' legality. Individual debtors would need to engage in extensive discovery to verify the permissibility of the servicer's calculations. This reality makes it equally impossible to use the Mortgage Study data to apply systematic analyses to determine if servicers are actually charging illegal fees. The available bankruptcy court records simply do not provide the necessary information. Indeed, the courts that have adjudicated disputes over mortgage claims have needed dozens of hours of evidentiary testimony to decipher the basis for the total amount claimed by mortgage servicers. This, in fact, is the key point. By obscuring the information needed to determine the alleged basis for the charges, servicers thwart effective review of mortgage claims. The system can only function as intended if complete and appropriate disclosures are made.

Notwithstanding the limitations of the servicers' itemizations, I attempted to conduct an individual review of claims that were merely categorized as "other." Given that the categories used to code the claims data (e.g., "foreclosure costs") were deliberately broad enough to encompass all likely charges, these charges seemed per se suspicious. I identified dozens and dozens of claimed fees that appeared to be impermissible or, at minimum, should have been challenged to ensure that the creditor had a basis for such unusual charges. Table 1 gives a few examples of causes for concern.

179. *See supra* Part I.

Table 1: Actual Fees from Mortgagees' Claims

Description	*District*	*Fee Amount*
Attorneys fees	Western District of Virginia[a]	$31,273
Bankruptcy fees & costs	Northern District of Georgia	$2,275
Broker price-opinion fee	Eastern District of Arkansas	$1,489
Demand fee	District of Massachusetts	$145
Overnight delivery	Eastern District of Michigan	$137
Payoff-statement fee	Southern District of California	$60
Fax fee	Eastern District of Virginia	$50

The law constrains the charges that debtors must pay in several ways. Based just on their descriptions and amounts, the fees in Table 1 appear vulnerable to legal challenge. Yet, none of these claims were objected to by any party in the bankruptcy proceedings. The law's various limits on fees were never invoked to test the validity of these charges.

The first legal constraint on fees and charges is private contract law. The note and mortgage themselves are agreements that limit the parties' obligations.[180] Most mortgage notes only obligate the borrower to pay the lender for "reasonable" costs incurred to collect on the debt or enforce the security interest.[181] The standard mortgage permits the lender, upon default (including a bankruptcy filing) to "do and pay for whatever is reasonable or appropriate" to protect the lender's interest in the property and rights under the security agreement.[182] While this language is quite broad, it is not

180. This point reinforces the problems created when claims are not supported by this documentation, particularly for subprime loans that do not conform to Fannie Mae's or Freddie Mac's standards.

181. For example, one of the notes from a Tennessee case included in the Mortgage Study sample contains the following language: "COSTS OF COLLECTION AND ATTORNEYS' FEES—I agree to pay you all reasonable costs you incur to collect this debt or realize on any security. This includes, unless prohibited by law, reasonable attorneys' fees."

182. *See* Fannie Mae Standard Instruments, *supra* note 165. In almost all states, the Fannie Mae standard instrument provides:

> If [Borrower defaults (including by filing bankruptcy)], then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

unlimited. For example, at least one court has held that payoff fees are impermissible because they constitute a nonreimbursable expense under the terms of the note.[183] Another court ruled that a servicer could not charge a homeowner for property inspections because it had failed to give the debtor notice of the inspections as required by the note.[184] The typical amount of a fax fee ($50) could also be challenged as unreasonable. Such requests are apparently handled automatically by fax-back technology at minimal cost to the servicer.[185] Thus, some of the fees shown in Table 1 may be neither reasonable nor permitted by contract. Paying such claims would distort the claims-distribution process and impose unfair burdens on debtors in making bankruptcy payments.

State or federal statutes also limit the fees that debtors must pay. Certain charges that appear on proofs of claim simply are not legal. Some states prohibit the "pyramiding" of late fees[186] or have promulgated specific rules about the use of suspense accounts to hold partial payments in abeyance.[187] Because mortgage servicers operate on a national basis, they may be unaware of these state laws. Alternatively, servicers may apply the same fees to all loans covered by one securitization agreement, despite the fact that varying state law actually applies to the loans. The propriety of fees may be impossible to verify without a payment history for the loan, which almost never was attached to the proof of claim.[188] For example, the

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding.

Id. The standard instruments of Georgia, New York, and Wisconsin include substantially similar language. *Id.* Maine's standard instrument provides that the lender may "do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property." *Id.*

183. *See, e.g.*, Dougherty v. N. Fork Bank, 753 N.Y.S.2d 130, 131 (N.Y. App. Div. 2003) (holding that the payoff-quote fee of $25 was not permissible under state law); *see also* GA. CODE ANN. § 7-6A-3(4) (2004) (generally prohibiting a payoff fee but allowing a limited fee of $10 if the borrower requests a faxed copy of the payoff amount or has made other recent payoff requests).

184. *In re* Stewart, 391 B.R. 327, 344–45 (Bankr. E.D. La. 2008).

185. *See* Michael LaCour-Little, *The Evolving Role of Technology in Mortgage Finance*, 11 J. HOUSING RES. 173, 192 (2000) ("Payoff requests can be handled by incorporating the related fax-back technology, in which printed payoff statements (as would be required for a refinance loan) can be automatically faxed back to a telephone number entered during the same automated telephone transaction.").

186. The standard Fannie Mae note seems to prohibit the pyramiding of late fees, stating that the borrower will pay a late charge "only once on each late payment." *See* Fannie Mae Standard Instruments, *supra* note 165. Some transactions use different notes (and thus, it is important that a copy of the note accompanies the proof of claim), and some servicers may not honor the terms of the notes, either intentionally or inadvertently.

187. *See* JOHN RAO ET AL., NAT'L CONSUMER LAW CTR., FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING 154–55 (2d ed. 2007) (discussing the use of suspense accounts).

188. The instruction on the proof-of-claim form says that the claimant "must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed." Official Bankruptcy Form 10 (2007), *supra* note 41. This arguably requires not just the note to show the existence of the original debt, but also a current payment history that supports that the debtor actually owes the amount of the claim.

payment history may show that the servicer imposed late charges on the homeowner, despite the fact that the homeowner's check cleared the bank before the payment was due,[189] or that the servicer held funds in suspense accounts without application to the amount due.[190]

Some servicing practices may constitute consumer abuse. For example, the FTC alleged that Fairbanks Capital Corporation had engaged in an unfair or deceptive practice by repeatedly and unnecessarily assessing property-preservation fees, which usually means an agent drove by the property to determine its condition.[191] The settlement enjoined the assessment of such fees more frequently than every thirty days and permitted such charges only if Fairbanks was unable to contact the borrower or had determined that the property was vacant.[192] Nonetheless, servicers continue to be faulted for conducting an unreasonable number of inspections.[193] One bankruptcy court has stated that it is "done allowing lenders reimbursement for property inspections," unless the lenders can show "that those property inspections actually happened and that they're worthwhile."[194] If the fees cannot meet these criteria, they may not legally be charged. Imposing such fees could give rise to a counterclaim against the servicer for engaging in an unfair or deceptive practice. The amount of the property-preservation fees in the sampled itemizations varied greatly, suggesting either that many of these fees resulted from multiple inspections or that a few servicers may be charging an unreasonable amount for a single inspection service.[195] The "broker price opinion" charge in Table 1 would grossly exceed the standard cost for this type of property inspection, which is essentially an abbreviated appraisal. If the $1,489 sum represents several inspections, the servicer should have separated these charges in its detail of fees.

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189. *See, e.g.*, *In re* Ocwen Fed. Bank FSB Mortgage Servicing Litig., Case No. 04-CV-2714, MDL-1604, 2006 WL 794739, at *1 (N.D. Ill. Mar. 22, 2006) (denying a motion to dismiss a multidistrict litigation suit that alleged, *inter alia*, that the servicer misapplied payments and improperly imposed late fees).

190. Most loan instruments specify how payments are to be applied, and violations of this language are potential breaches of contract.

191. *See* United States v. Fairbanks Capital Corp., No. 03-12219, 2004 WL 3322609, at *1 (D. Mass. May 12, 2004) (approving the settlement agreement of the FTC's deceptive-trade claims against Fairbanks Capital Corporation).

192. United States v. Fairbanks Capital Corp., No. 03-12219 (D. Mass. Nov. 21, 2003) (order preliminarily approving stipulated final judgment), *available at* www.ftc.gov/os/2003/11/0323014order.pdf.

193. *See In re* Stewart, 391 B.R. 327, 343–45 (Bankr. E.D. La. 2008) (criticizing a servicer for inspecting the debtor's property on average every fifty-four days after default, notwithstanding that every inspection reported the property to be in good condition).

194. Transcript of Hearing at 3, *In re* Waring, No. 06-40614 (Bankr. D. Mass. July 27, 2007).

195. In addition to the example given in Table 1, two different proofs of claim from the Northern District of Texas requested payment of property-preservation fees of $105; another property-preservation fee from the Southern District of Georgia was $240. Inspection and appraisal were frequently combined in a laundry list of fees, making it impossible to determine whether the inspection or appraisal parts of these charges were reasonable. *See supra* notes 176–78 and accompanying text.

Another limitation on charges is found in the general law of contracts. Even if the parties' agreement does not contain a reasonableness requirement for default fees, egregious charges could be challenged as unconscionable as a matter of contract law.[196] For example, the overnight delivery charge of $137 in Table 1 may meet this standard. A court could rule that this charge violated public policy. It is quite possible, of course, that the $137 represents the sum of many charges, rather than one mailing. Alternatively, perhaps it reflects a data-entry error and should have been $13, or $17, or $37. The crucial problem is that the bankruptcy system did not flag this item as a potential cause for concern and seek to determine if this charge was legally permissible.

Federal bankruptcy law imposes additional legal constraints on the charges that debtors must pay their mortgage companies. Many claims in the sample included a flat "bankruptcy fee" in the proof of claim.[197] The propriety of this practice is unclear. Some courts have held that, to the extent these fees are for creditors' attorneys fees, it is impermissible to include them in claims.[198] Instead, creditors must file fee applications pursuant to Federal Rule of Bankruptcy Procedure 2016.[199] Other courts have reached a contrary conclusion and permitted attorneys fees in claims.[200] Some courts have modified this approach, requiring that the disclosure of the attorneys fees be "specific,"[201] or ruling that while including fees is prima facie permissible, a fee application will be required only if the debtor objects to the fees.[202] These inconsistent rulings make it more difficult for both servicers and

196. *See generally* U.C.C. § 2-302 (2004) (acknowledging the authority of courts to void unconscionable portions of a contract).

197. In the remainder of this subpart, I use the term "bankruptcy fee" as shorthand to describe these fees. I did not include any fees that were identified as related to actual post-petition litigation, such as a motion for relief from the stay or an objection to confirmation.

198. *See, e.g.*, Tate v. NationsBanc Mortgage Corp., 253 B.R. 653, 655–56 (Bankr. W.D.N.C. 2000) (ruling that a creditor cannot "hide" attorneys fees for preparing a proof of claim in the claim itself without court approval).

199. *See In re* Ezzell, No. 07-34780, slip op. at 5–6 (Bankr. S.D. Tex. Jan. 14, 2008) (disallowing attorneys fees for failure to comply with Rule 2016); *Tate*, 253 B.R. at 665 (ruling that a creditor's attempts to claim attorneys fees under a proof of claim is a violation of Rule 2016); *see also* FED. R. BANKR. P. 2016 (setting forth the application requirements for an entity seeking compensation for services from the bankruptcy estate).

200. *See, e.g.*, Atwood v. Chase Manhattan Mortgage Co. (*In re* Atwood), 293 B.R. 227, 232 (B.A.P. 9th Cir. 2003) (rejecting *Tate*'s reasoning and holding that a proof of claim satisfies the due process requirements for recovering attorneys fees).

201. *See, e.g.*, *In re* Madison, 337 B.R. 99, 103, 103–04 (Bankr. N.D. Miss. 2006) ("[T]he attorney fees, costs and charges must be itemized so that any interested party may object if so desired."); Powe v. Chrysler Fin. Corp. (*In re* Powe), 281 B.R. 336, 347 (Bankr. S.D. Ala. 2001) (concluding that fees labeled "attorneys fee" or "atty fee" were not specific enough to provide the requisite notice of the nature of the fee).

202. *See, e.g.*, *In re* Plant, 288 B.R. 635, 644 (Bankr. D. Mass. 2003) (holding that there is no need for a creditor to incur the time and expense of preparing a fee application absent a challenge by a debtor).

attorneys to know how to handle these charges in preparing bankruptcy claims.

The amounts of attorneys fees disclosed in the claims varied considerably. The data revealed several clusters of bankruptcy fees; the most common amounts were $125, $150, $250, $275, and $500. On a dollar basis, the difference in these amounts is small. On a percentage basis, however, many mortgagees charge two or three times as much as other mortgagees.[203] Because the fees varied within judicial districts, the discrepancy does not seem to be attributable merely to regional cost differences.[204] The consistency of such fees also suggests that many servicers use a flat fee rather than a lodestar method based on hourly rate, which is required in some jurisdictions.[205] Given the nonexistent or minimal scrutiny of most mortgage claims,[206] the system appears to permit mortgagees to effectively make their own determinations of what constitutes reasonable attorneys fees for a routine Chapter 13 bankruptcy.

A related problem is that one cannot discern from a flat bankruptcy fee whether such charges actually represent an actual expense for attorneys. Some creditors use such bankruptcy fees to collect "monitoring" fees due to the purported additional burden of having to service a loan in bankruptcy.[207] In other instances, servicers may seek to impose bankruptcy fees for the purported administrative costs of preparing proofs of claim.[208] If such work

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203. A review of the claims in the Mortgage Study shows that the bankruptcy fee of Bank of America was $250. Yet, Chase Home Finance, LLC imposed a bankruptcy fee of half that amount, or $125. Because these lenders are large, national institutions, presumably their actual costs for preparing a proof of claim would be quite similar. Nevertheless, the data show a disparity. It appears that debtors whose mortgages are held by Bank of America must pay $125 more than debtors whose mortgages are held by Chase Home Finance, LLC in order to complete their plans.

204. For example, in the Eastern District of Arkansas, bankruptcy fees ranged from $125 to $800.

205. *See, e.g.*, *In re* Boddy, 950 F.2d 334, 337 (Bankr. W.D. Ky. 1991) (holding that a lower court abused its discretion by employing a "normal and customary" standard, rather than a lodestar analysis, to calculate the fee award).

206. *See infra* subpart III(D).

207. The lodestar-versus-flat-fee issue was apparently a point of contention in the work of the National Association of Chapter 13 Trustees' committee on proofs of claim. The servicers wrote separately on this issue to argue that a flat fee should be permissible, analogizing to the flat "no-look" fee that some courts permit for Chapter 13 representation to avoid debtors' counsel having to file a fee application pursuant to Rule 2016 in each case. NAT'L ASS'N OF CHAPTER 13 TRUSTEES MORTGAGE COMM., NOTES BY MORTGAGE SERVICERS ON MORTGAGE SERVICING DURING A CHAPTER 13 BANKRUPTCY 3–4 (2007) (included in REPORT, *supra* note 175)

208. This may be particularly true when the charge was described as "POC prep fee" or "plan review" fee. Arguably, neither of the prior-quoted activities is strictly necessary to "defend th[e] mortgage," nor are they costs from "prosecut[ing] all necessary claims and actions to prevent or recover for any damage to or destruction of the property," although such language commonly appears in the standard mortgage documents upon which lenders rely to collect bankruptcy fees. *See* RAO ET AL., *supra* note 187, at 176 (reproducing a provision contained in standard mortgages that a large loan-servicing company relies on to impose bankruptcy-monitoring fees). Further, the preparation or filing of a proof of claim and the review of a proposed Chapter 13 plan may not

is performed by internal employees and not by licensed attorneys, the corresponding fees cannot be claimed under the "reasonable attorneys fees" provision of the security agreements or notes.[209] Arguably such expenses are mere costs of servicing a mortgage that the servicer was previously compensated for by the owners of the note.[210] Without better disclosure, bankruptcy courts cannot even ensure that creditors are respecting the bankruptcy law that governs attorneys fees.

Delinquency and default fees can be a substantial source of profit for servicers.[211] The requirement that an itemization be attached to a bankruptcy claim could be a valuable check to the financial incentives of mortgage servicers to overreach and to charge unreasonable or illegal fees. However, the itemizations suffer two fatal defects—a lack of standardization and a lack of detail—that inhibit any meaningful review of the amount of mortgagees' claims. By describing charges in vague generalities, creditors can eviscerate the purpose of the proof-of-claim process, which is to ensure that creditors offer evidence of their debts.

Individualized review of "other" fees on claims highlights some instances of suspicious fees. While the data admittedly do not permit concrete findings of servicer misconduct, courts that have conducted evidentiary hearings to determine the validity of servicing fees have invalidated charges similar to these and sanctioned creditors for misbehavior.[212] The key point that can be substantiated by the itemization data is that servicers fail to provide the necessary information to allow debtors or trustees to review the claims. The resulting situation permits servicers to overcharge debtors without fear of challenge. These problems suggest that the bankruptcy system may be harboring mortgage-servicing abuse, rather than functioning as a system to protect homeowners from imper-missible charges.

Anecdotal reports suggest that creditors proffer similarly vague itemizations to borrowers facing state-law foreclosure.[213] Indeed, given the additional safeguards inherent in the bankruptcy process, the data may understate the difficulty that nonbankrupt homeowners face in reviewing

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constitute an "appearance" by the lender, which is a prerequisite to the borrower's becoming obligated to pay the lender's costs and expenses. *Id.*

209. *See id.* at 177 ("If all the lender is doing is 'monitoring' the bankruptcy, that is, receiving court notices, reading them, keeping them, and so forth, then these activities do not constitute the practice of law and should not be compensable as an attorney fee.").

210. *See id.* (concluding that routine administrative services are generally not compensable under any reading of typical mortgage provisions that permit the recovery of costs).

211. *See* Gretchen Morgenson, *Can These Mortgages Be Saved?*, N.Y. TIMES, Sept. 30, 2007, § 3, at 1 ("Borrower advocates fear that fees imposed during periods of delinquency and even foreclosure can offset losses that lenders and servicers incur.").

212. *See supra* subpart I(D) (discussing the *Jones v. Wells Fargo* and *In re Parsley* cases).

213. *See* Morgenson, *supra* note 211, at 8 (reporting that a payoff-demand statement that Countrywide provided to a borrower had line items identified only as "fees due" and "additional fees and costs" that totaled $8,525).

default or foreclosure costs. Inside or outside of bankruptcy, the law does not appear to be functioning as intended to ensure that creditors must satisfy the evidentiary burden to show that charges are permissible under applicable law.

C. Discrepancies Between Debtors' Schedules and Mortgagees' Claims

The proof-of-claim process is the mechanism for fixing the amount of the debtor's obligation. When they file Chapter 13 bankruptcy, most homeowners are in default on their mortgages.[214] Thus, most claims seek to establish both the amounts of the arrearages and the amounts of the outstanding principal remaining on the loans. These amounts are treated differently in Chapter 13 cases. To retain their homes, debtors must "cur[e] any default within a reasonable time,"[215] normally by making payments over the period of the Chapter 13 plan (three to five years) or a shorter period as fixed by the bankruptcy courts.[216] Any regular mortgage payments also continue to be due as set forth in the note. Debtors must pay both the arrearages and their ongoing mortgage payments to retain their homes and receive discharges of remaining unsecured debt.[217] Thus, part of the pre-bankruptcy calculus that debtors and their attorneys should consider in determining whether debtors can save their homes in bankruptcy is whether they will have sufficient income to make both payments.[218] To weigh the viability of Chapter 13 bankruptcy and consider alternatives such as Chapter 7 bankruptcy or surrendering the home, debtors and their attorneys need a fairly accurate estimate of the amount of the outstanding arrearage and the amount of the total mortgage debt.

This subpart analyzes data to measure whether debtors and creditors agree on the amount of mortgage debt. The goal was to determine if either party had a substantial misunderstanding of the amount of the debt. For this analysis, I matched each home loan listed on a particular debtor's schedule to its corresponding proof of claim.[219] I then measured the direction and extent of the gap between the debtor's and mortgagee's calculations of the mortgage debt.[220] If the amount on the claim exceeded the mortgage debt on the

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214. *See supra* note 38 and accompanying text.

215. 11 U.S.C. § 1322(b)(5) (2006).

216. *See* 2 LUNDIN, *supra* note 47, § 133.1 (noting that several bankruptcy courts have formulated factor tests for the reasonableness determination and citing decisions that permitted the curing of defaults for a wide variety of time periods).

217. *See* 11 U.S.C. § 1328(a) (requiring the debtor to complete all payments under the plan before the court may discharge debts provided thereunder).

218. *See* Jacoby, *supra* note 128, at 337 (arguing that the failure of debtors' lawyers to screen their clients for their ability to complete a Chapter 13 repayment plan results in more unsuitable debtors in Chapter 13 bankruptcy).

219. It was not possible to perform this matching for every home loan. Among the 2,164 home loans in the sample, only 1,768 proofs of claim were filed.

220. For the gap analysis, some loans and their corresponding claims had to be eliminated. First, loans were eliminated if the Schedule D or the proof of claim had a zero or a blank entry for

debtor's schedule, I termed the gap in the "creditor's favor." In these instances, the creditor was asserting that more dollars were owed in the mortgage debt than the debtor believed were owed. Conversely, if the scheduled amount of mortgage debt exceeded the amount on the mortgagee's claim, I termed the gap in the "debtor's favor." Here, the gap between the schedule and the claim resulted from the debtor's overreporting the amount of mortgage debt.

Figure 3 shows what fraction of claims fell into each of three categories—creditor's favor, debtor's favor, and no discrepancy—based on the existence of discrepancies between the claims and the scheduled amounts of debt. Debtors and creditors agreed on the amounts owed for only 74 of 1,675 loans (4.4%). For the vast majority of loans (95.6%), the debtor and mortgagee did not agree on the amount of mortgage debt. In about one-quarter of instances (25.2%), the debtor's scheduled amount exceeded the mortgagee's claim. However, the majority of claims exceeded the debtor's calculation. Seven in ten (70.4%) claims asserted that the mortgage debt was greater than what the debtor listed on the schedule.

Figure 3: Percentage of Claims by Type of Gap

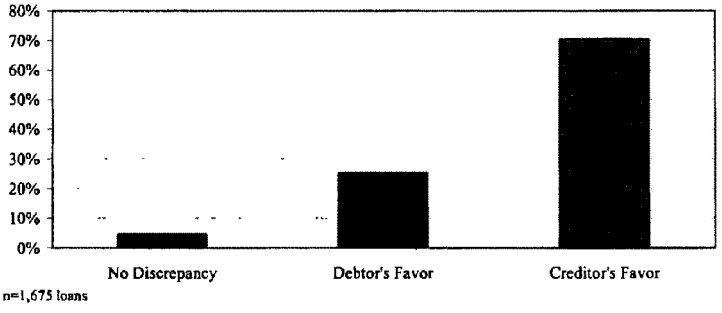


Figure 3 shows that, as an initial matter, the debtor and creditor do not agree on the amount of the debt in the vast majority of cases. The mere

the amount of the debt. These are usually placeholders, akin to listing the debt as "unknown." Second, loans were eliminated if the schedules and claims were not attempting to calculate the same thing. This usually occurred because one party listed only the arrearage amount and the other calculated the entire outstanding mortgage debt—both arrearage and principal. These cases were excluded from the gap analysis because the disagreement was in large part a result of the parties' not trying to communicate the same debt. In a very small number of instances, when both the creditor and the debtor clearly provided only the arrearage amount, the cases were used in the gap analysis because the discrepancy in calculation can be fairly compared. Finally, twelve loans were removed as outliers. Two criteria were used to identify these situations. Six loans were eliminated because the gap between the claim and the scheduled debt exceeded 200% of the amount of the scheduled debt. An additional six loans were deemed outliers because the gap exceeded $100,000 in absolute dollars and the gap was greater than 50% of the amount of the scheduled debt.

existence of discrepancies is not itself alarming. The findings in Figure 3 could merely reflect minor differences in record keeping. Alternatively, the claims could consistently be larger because of the addition of modest and explainable postbankruptcy charges such as accrued interest.[221] I explore these explanations with additional analyses, ultimately concluding that the data do not suggest that either reason can fully explain the discrepancies in creditors' and debtors' calculations.

The first indication that the disagreements may be genuine and serious comes from evidence on the dollar size of the gaps. Among all loans, the median claim exceeded its corresponding scheduled debt by $1,366. The average difference between a claim and its scheduled debt was $3,533.[222] In the typical bankruptcy, a mortgage creditor asserted that it was owed a significantly larger amount than the debtor believed was the home debt. These errors are too large to reflect small, record-keeping situations, such as a single late charge imposed since the debtor's most recent mortgage statement or a postbankruptcy property inspection.

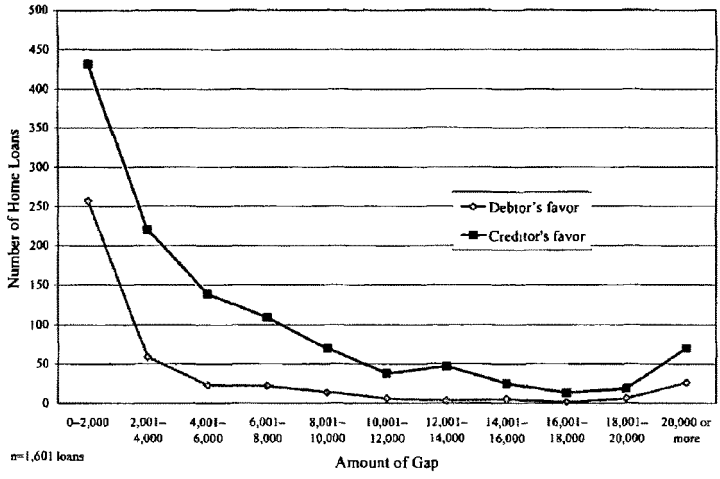
The second indication that postbankruptcy charges cannot explain most of the differences in debtors' and creditors' calculations is the existence of claims in which the debtor overestimated the amount of the debt. Postbankruptcy charges can only explain discrepancies in favor of creditors. Debtors do not know whether such charges will be imposed and cannot include them in their schedules. The debtor's-favor gaps suggest that the disagreement occurs for a different reason, at least in many instances.

Further analysis reinforces the conclusion that the gaps between claims and scheduled debts reflect a serious misunderstanding. Figure 4 shows the distribution of the size of the gap amounts between claims and the corresponding scheduled debt. At every interval, the number of times in which the creditor's claim exceeded the scheduled amount was greater than the number of times in which the debtor estimated a higher debt. While the disagreements go in both directions (with debtors and creditors each reporting a higher amount of debt in some instances), creditors more frequently charge more than debtors think is owed.

221. The debtors' schedules should only reflect the amount due at the time of the bankruptcy. The proof-of-claim forms should be identical, as the instructions specify that the amount should be the "Amount of Claim as of Date Case Filed." Official Bankruptcy Form 10 (2007), *supra* note 41. However, some creditors ignored this instruction and listed charges that arose after the bankruptcy was filed and before the claim was filed (a period of usually less than sixty days).

222. The sample size was 1,675. The analysis included those loans in which the claim amount and the scheduled amount were identical (no gap). The standard deviation for the entire sample was $11,480.

Figure 4: Gap Between Proofs of Claim and Schedule D Amounts



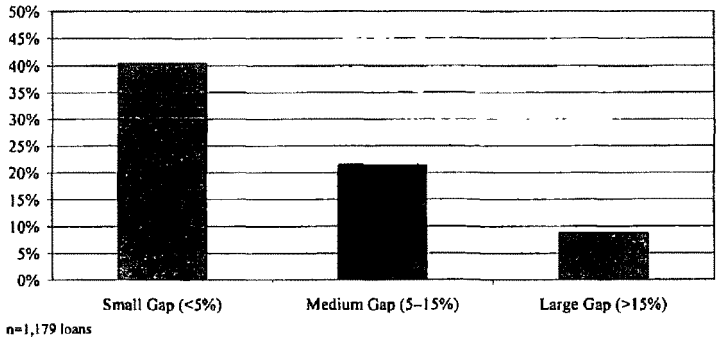
Creditor's-favor gaps were consistently larger than debtor's-favor gaps. The median gap for loans in which the claim exceeded the scheduled amount (creditor's favor) was $3,311. The average creditor's-favor gap was $6,309. The size of the typical gap in the debtor's favor was much less. The median was $1,090, less than one-third of the gap for creditor's-favor loans.[223] The bottom line in Figure 4 shows that debtor's-favor gaps were of modest amounts, with the vast majority of such differences calculated at less than $2,000. The top line in Figure 4, however, shows that very large gaps were much more common when the creditor's calculation exceeded the debtor's calculation. Many creditors requested payment on the proof of claim of several thousand more dollars than debtors thought they owed.

Of course, mortgage debts are relatively large in absolute size. It is difficult to articulate an exact standard for a "minor" versus "major" disagreement and to know at what point the gaps are sufficiently large that the bankruptcy process is undermined if these discrepancies are not being identified and resolved. An alternative to measuring the gaps in absolute dollars is to consider the size of the gaps in relation to the amount of the claims. For this analysis, I calculated the percentage size of each gap in relation to the amount of the debtor's scheduled debt. For example, if a

223. The average gap among the debtor's-favor claims was $5,376. As with the creditor's-favor claims, the size of the average reflects a substantial number of claims with very large gaps. The standard deviation of the debtor's-favor claims was $13,704. The standard deviation for the creditor's-favor claims was $9,143.

debtor's schedule listed an outstanding mortgage obligation of $100,000 and the corresponding proof of claim was for $110,000, the gap is $10,000. As a percentage of the amount of scheduled debt, the gap is 10%. I grouped these percentage-size data into categories as shown in Figure 5 for creditor's-favor claims (70.6% of all loans). About four in ten (40.4%) of all loans in the Mortgage Study sample had a mortgage claim that exceeded the corresponding debtor's scheduled amount by less than 5%. The more alarming findings concern the portion of claims in which the creditor's claim was much higher than the debtor's amount. The gap was between 5% and 15% of the debtor's calculation of the mortgage debt for 21.4% of all loans in the sample. Another 8.8% of loans had mortgage claims that were more than 15% higher than the amount of debt as calculated by the debtors on their schedules. Given their size, it seems implausible that these discrepancies resulted from valid postbankruptcy charges or an underestimation by debtors relying on the prior month's mortgage statements to complete the bankruptcy schedules. Instead, the magnitude of these differences suggests a real misunderstanding between debtors and creditors about the amounts of mortgage debt.

Figure 5: Frequency of Creditor's-Favor Gaps, Calculated as Percentage of Claimed Amount

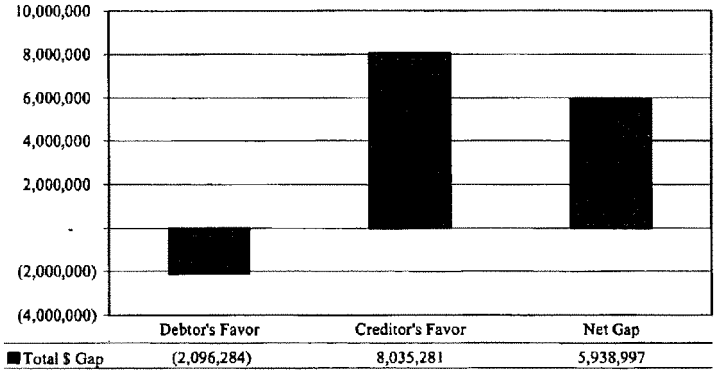


Unfortunately, the data do not permit an analysis of what portion of the disagreement about the debts relate to arrearage and what fraction, if any, is due to differing calculations of outstanding principal. Creditors and debtors were not consistent enough in separating these amounts to make any systematic comparison. Given that the outstanding principal appears on each mortgage statement that a debtor receives, it seems likely that at least some fraction of the disagreement is attributable to default charges and fees. These costs cannot be easily calculated by debtors, who may only take into account missed payments in determining the arrearage amounts. To the extent the

gaps between claims and scheduled amounts represent default costs, they offer a powerful reminder of how quickly mortgage debt can mushroom and how difficult it can be for debtors to find the income to cure arrearages.

A final rebuttal to the assertion that the gap data indicate the existence of only minor misunderstandings comes from a system-wide analysis. On an aggregate basis, the disagreements between debtors and mortgagees are a multibillion-dollar problem. Based solely on the Mortgage Study sample of approximately 1,700 loans, millions of dollars are at risk of misallocation. Figure 6 shows the total of all debtor's-favor claims (scheduled amount exceeded claim) and all creditor's-favor claims (claim exceeded scheduled amount). When viewed from a systems standpoint,[224] the cumulative effect of the discrepancies is enormous. Mortgage creditors in the sample requested nearly $6 million more on proofs of claim than the debtors reflected on their schedules. The mismatch between debtors' and creditors' calculations tilts sharply in favor of creditors.

Figure 6: Aggregate Gap Between Claims and Scheduled Amounts



Extrapolating this finding beyond the Mortgage Study sample shows the scope of the problem for the entire bankruptcy system. About 400,000 homeowners per year have filed Chapter 13 bankruptcy in recent years.[225] Multiplying the $6 million gap from the sample of 1,700 cases to the total homeowners in Chapter 13 indicates that each year mortgagees claim over $1

224. *See* Lynn M. LoPucki, *The Systems Approach to Law*, 82 CORNELL L. REV. 479, 481 (1997) (describing systems analysis as a methodology developed to manage complexity).

225. Am. Bankr. Inst., Quarterly Non-business Filings by Chapter (1994–2008), http://www.abiworld.org/AM/AMTemplate.cfm?Section=Home&CONTENTID=49785&TEMPLATE=/CM/ContentDisplay.cfm.

billion more than debtors believed was owed. If even a small fraction of this aggregate sum represents creditors overreaching in their claims, the damage to the bankruptcy process is tremendous. Debtors are surprised after filing bankruptcy by the burden of paying their mortgage debts, and distributions to other creditors could be unfairly skewed.

The substantial number of cases with large discrepancies shows that debtors and creditors operate in bankruptcy with very different understandings of the amounts of mortgage debt. The most likely explanation for this phenomenon may be that debtors and creditors simply have different records or lack reliable records. The finding that debtors overestimate their obligations in just over one-quarter of loans is consistent with this hypothesis. Debtors get no benefit from inflating their mortgage debt on their bankruptcy schedules. In most cases, neither debtors nor their attorneys appear to confirm the amount of the mortgage debt with the creditors at the time of the bankruptcy filing.[226] The data strongly suggest that many debtors file bankruptcy without knowing how much their mortgage creditors think is owed. The problem could reflect a different phenomenon. Creditors' claims may themselves be bloated and overstate the accurate amounts of debt. Such problems could result from servicers' practices of loading claims with default fees that are not disclosed to debtors, or from mistaken calculations of the amounts due in preparing the proofs of claim. Case law has documented both effects.[227]

Regardless of which party's calculation is correct, and even assuming all parties' behavior is unintentional, serious policy consequences occur from the system's failure to resolve these discrepancies. If the mortgagee was actually owed a smaller amount than the debtor thought was due, the counseling process regarding the advisability of bankruptcy was based on misinformation. If the arrearages were significantly less than the debtor believed, viable alternatives to Chapter 13 bankruptcy could have existed. Perhaps the debtor could have borrowed the amount necessary to cure the default in one payment. Or perhaps the debtor would have tried asking the servicer for a repayment plan outside of bankruptcy.

The creditor's-favor gaps raise equal, or more serious, harms. Additional amounts of mortgage debt have meaningful effects on families in bankruptcy. If creditors are overreaching by even half of the amount suggested by either the absolute-dollar analysis or the percentage analysis, they are imposing a hefty burden on debtors' disposable incomes and diverting money from unsecured creditors. Claims that are bloated by

226. Servicer practices may deter debtors from getting such information. As explained above in subpart I(A), servicers have no reputational concern about poor customer-service response, and so many servicers make it time consuming and difficult for a debtor to reach them. Additionally, the industry practice of imposing "payoff" or "statement" fees discourages debtors from making account inquiries.

227. *See supra* text accompanying notes 86–91.

default fees or enlarged due to a servicer's miscalculations diminish bankruptcy's potential as a home-saving device.

To prevent the harms from either type of gap, two changes are needed. Debtors attorneys should obtain up-to-date statements of their clients' mortgage obligations from creditors before counseling debtors to file Chapter 13. Then, after a bankruptcy is filed, attorneys and debtors should verify the accuracy and reasonableness of the mortgagees' claims, examining the source of any discrepancies between the claims and the scheduled amounts. To enable this latter practice, creditors must be held to the evidentiary standard for proofs of claim and must produce complete and clear documentation of their calculations. Without these changes, the functioning of the bankruptcy process is impaired.

D. Claims Objections

The findings in the prior three Parts of this Article offer a trio of indicia that undermine confidence in the claims system. Mortgagees often presented claims without required documentation;[228] many claims contained requests for suspicious fees;[229] and mortgagees' claims and debtors' records were rarely identical.[230] The proof-of-claim process has an existing, internal mechanism to address such problems. Under § 502(a) of the Bankruptcy Code, any party in interest may object to a claim.[231] If such an objection is made, "the court, after notice and a hearing, shall determine the amount of such claim."[232]

Despite these procedures, mortgage creditors are rarely called to task for the widespread deficiencies in their claims. Objections were identified to correspond with only 67 of the 1,768 proofs of claim in the sample. In other words, objections were filed in response to only 4% of all claims. Debtors, trustees, and other creditors simply did not object to mortgagees' claims—even when such claims did not meet the standard for prima facie validity because the claims did not comply with the unambiguous requirements of Rule 3001;[233] even when such claims contained vague or suspicious fees; and even when such claims exceeded the debtors' calculations of their debts by thousands of dollars. A debtors attorney who has developed a training program to educate attorneys about mortgage-servicing issues[234] has

228. *See supra* text accompanying notes 149–54.

229. *See supra* text accompanying notes 173–74, 209–11.

230. *See supra* subpart III(C).

231. 11 U.S.C. § 502(a) (2006).

232. *Id.* § 502(b).

233. FED. R. BANKR. P. 3001(f) ("A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.").

234. *See infra* note 238.

concluded "that the vast majority of Chapter 13 debtors and their attorneys do little or nothing about these illegal fees and charges."[235]

Among the objections that were filed, there were no observable patterns. The objections came from a variety of districts.[236] While many districts had only one objection, no district had more than seven objections. It appears that no jurisdiction has a strong local practice of reviewing and objecting to claims that would distinguish it from national norms.

Debtors filed more than two-thirds of all objections (forty-four objections); Chapter 13 trustees filed the remaining objections. Debtors' objections usually alleged substantive problems with the claims. The most common basis for objection was a disagreement about the amount of the claim. These situations alleged a variety of wrongs: the claim contained excessive fees; the escrow amount was incorrect; the attorneys fees were not itemized; or the mortgagee double-charged for property tax. In a few instances, the debtor contested the inclusion of any arrearages in the claim because the debtor believed the loan was current. Chapter 13 trustees typically focused on procedural problems with claims. The trustees' most frequent basis for objection was simply that a claim was a duplicate of a previously filed claim. Trustees' other objections were for egregious or facial errors. The sample contains trustee objections because a claim was for a borrower other than the bankruptcy debtor and because a claim was filed after the bar date for filing claims. The tiny number of objections makes it difficult to develop any useful model of why objections were filed in these cases and not in other claims with documentation deficiencies, unidentified fees, or discrepancies with debtors' schedules.

Neither the few high-profile cases about mortgage-servicing abuse nor the anecdotal allegations of widespread problems with the reliability of mortgage claims appear to have sparked more scrutiny of claims. The formal objection process for deficient or incorrect claims is largely dormant. The written law that governs claims does not appear in reality to translate into a functional check on mortgage-servicing abuse. Many mortgage claims fail to comply with the bankruptcy rules and procedures; many also request unidentified or suspicious fees or reflect a serious discrepancy between debtors' and creditors' records. Yet no objection was filed in response to 96% of all claims, despite these problems. While Congress has emphasized the importance of a reliable bankruptcy system that garners the public's trust, creditors face no meaningful consequences when they disregard the law and this public policy and submit incomplete or unsubstantiated claims for judicial approval.

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235. O. Max Gardner III, *Mortgage Securitization, Servicing, and Consumer Bankruptcy*, 2 GP SOLO LAW TRENDS & NEWS, Sept. 2005, http://www.abanet.org/genpractice/newsletter/lawtrends/0509/business/mortgagesecuritization.html.

236. Twenty-five of the forty-four judicial districts had at least one claim objection.

The number of formal objections could understate the scrutiny that claims receive. Parties could be informally working out disagreements about claims. This hypothesis, however, is incongruent with the rare incidence of amended claims. Amended claims were located to correspond with only 9.7% of all mortgagees' initial claims. If creditors were being called to task through informal processes like phone calls from debtors' counsel or negotiations at plan-confirmation hearings, the result in most of such situations should be an amended claim.[237] Further, my interviews with dozens of consumer attorneys before beginning this study revealed that only a few practitioners regularly review all mortgage claims.[238] The high-volume nature of consumer practice undoubtedly explains this situation, but it does not excuse it. The missing documentation and the lack of standardized and detailed itemizations only heighten the financial and time costs to review claims.

The data offer a cautionary tale about relying on the formal law to actually function as intended to protect parties. Very few mortgage claims meet the ideal of the bankruptcy process; a majority of claims lack documentation and reflect a sizeable discrepancy in record keeping between debtors and creditors. Unambiguous law exists to address such problems. For decades, the system has relied on these procedures to safeguard the integrity of bankruptcy distributions. Yet, the paucity of objections shows a collective failure of the system to identify even patently defective claims.

Verifying that debtors only pay the amounts to which creditors are legally entitled should be a routine part of bankruptcy representation. This is a reasonable burden to impose on attorneys given the large size of mortgage claims and the requirement that debtors must pay all mortgage arrearage debt in full to save their homes. Similarly, trustees have a statutory obligation to object to improper claims,[239] yet rarely do so. The current system fails to

237. Another possibility is that the plan-confirmation process serves as a check on the accuracy of claims. In their proposed Chapter 13 repayment plans, debtors may be relying on their own calculations of the amounts due, rather than using the amounts of the mortgagees' claims as the basis for the required repayment. If the creditor does not object to the plan, the order confirming the plan would trump the claim for purposes of the required payment in bankruptcy. Conversely, creditors may be objecting to the amounts of mortgage debt in the plans, and if the objections are sustained, the plans would be conformed to the creditors' claims. The extent to which confirmed Chapter 13 plans reflect the creditors' claims or the debtors' scheduled amounts, or some compromise between these discrepant numbers, is an empirical question. The difficulty in testing this hypothesis is that, in most districts, the plan contains only the amount of pre-petition arrearage. Yet, some claims did not specify the arrearage at all, while other claims reflect only the combination of pre-petition and post-petition amounts. Thus, despite my efforts to do so, it is impossible to compare either the total claims or the total arrearages contained in confirmed plans to those contained in the proofs of claim in any significant fraction of cases.

238. *See also* Vicki Mabrey & Ely Brown, *Playing the Odds*, ABCNEWS.COM, Dec. 14, 2007, http://abcnews.go.com/Business/RealtyCheck/Story?id=4002397&page=1 (interviewing Max Gardner about the "bankruptcy boot camp" that he developed to train attorneys on mortgage issues in bankruptcy cases).

239. 11 U.S.C. § 704(a)(5) (2006).

offer sufficient incentives to encourage attorneys and trustees to obtain the additional information necessary to ensure that the amounts paid to mortgagees are correct. Similarly, the current system suggests that creditors can operate with the knowledge that their claims will not be reviewed or challenged. Combined with the financial incentives of servicers to overreach and the anecdotal evidence of servicing abuse,[240] there is a serious risk that mortgage servicers' overreaching and errors are imposing unfair burdens on families trying to save their homes. It is also possible that creditors' claims for nonmortgage debt are plagued with problems similar to those that exist in mortgage claims.[241] Indeed, because such debts are usually for smaller amounts, they may be subject to even less scrutiny for their accuracy. The evidence from the bankruptcy courts calls into question the ability of consumers to trust creditors to accurately and fairly account for their payments and assess charges.

IV. Implications

The systemic failure of the claims process to ensure that mortgage creditors are collecting only what they are legally owed harms debtors, other nonmortgage creditors, and the integrity of the bankruptcy system. Yet the most distressing implication may be the data's suggestion that mortgage-servicing abuse may be even more prevalent beyond bankruptcy.

A. Proof-of-Claim Process

The problems with mortgage claims are structural. Creditors should comply with federal law if they expect to receive distributions in bankruptcy. Debtors and their attorneys also must bear responsibility for ensuring accurate payments. Objections to claims do not appear with sufficient frequency to police claims, even with regard to large debts such as mortgages. The current claims process is malfunctioning.

Mortgagees' failure to satisfy Rule 3001 should not be dismissed as a mere technicality. The rules governing claims were implemented to provide adequate procedures to help parties identify claims for which a valid objection may exist, thus ensuring the accurate payment of claims.[242] Without documentation of the debt, the debtor and other creditors cannot

240. *See supra* subparts I(A), I(D).

241. The U.S. Trustee recently settled a complaint against Capital One that alleged that the credit-card issuer had filed claims and accepted payments in bankruptcy cases for debts that had been discharged in debtors' prior bankruptcies. Complaint of the U.S. Trustee Phoebe Morse for a Permanent Injunction & Other Equitable Relief at 3, Morse v. Capital One Bank (*In re* Galley), No. 06-12142-JNF (Bankr. D. Mass. Oct. 2, 2008); *see also* Amir Efrati, *Capital One in Settlement Over Card Debt*, WALL ST. J., Oct. 3, 2008, at B3 (announcing the settlement between Capital One and the U.S. Trustee).

242. *See* Alane A. Becket, *Proofs of Claims: A Look at the Forest*, AM. BANKR. INST. J., Dec.–Jan. 2005, at 10, 53 (describing how the rules governing claims are designed to give parties information and evidence to use in determining whether to object to the claim).

verify the legitimacy or accuracy of claims, each of which cuts into the limited dollars available for distribution. Poor compliance with the claims rules effectively deflects creditors' obligations onto cash-strapped, bankrupt families, who must choose between the costs of filing an objection or the risks of overpayment. Deficiencies in the claims process can permit unmeritorious or excessive claims to dilute the participation of legitimate creditors and to prevent the just administration of bankruptcy estates.[243] Further, from a systems standpoint, it is hard to discern the benefit of allowing parties to opt-out of rules at will. Reforms to the claims process will protect the integrity of the bankruptcy system.

Mortgagees' frequent failure to comply with Rule 3001 results from weaknesses in the current rules, which do not deter creditors from disregarding the documentation requirements. While the rules themselves use mandatory language, phrased in terms of "shall,"[244] the reality is that some creditors treat them as aspirations—or ignore them entirely. In most instances, there is no negative consequence when a mortgagee fails to attach the required documentation. Under the current system, the main tool to fight improper claims is Federal Rule of Bankruptcy Procedure 9011, which requires all factual contentions in pleadings to have evidentiary support.[245] While courts have sanctioned creditors for filing unsubstantiated claims,[246] Rule 9011 was not designed to correct the systematic failure of other rules. Rule 3001(f) provides a "carrot" to encourage compliance by granting prima facie validity to claims that are executed and filed in compliance with Rule 3001.[247] Yet, as a practical matter, all claims receive this treatment if neither the debtor nor another party in interest objects to the claim. Creditors can rely on the lack of scrutiny to validate their claims and sidestep the burdens of Rule 3001.

The consequences of disregarding Rule 3001 need to be sharpened. Even when an objection is filed, there is typically no sanction for missing

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243. *See* Gardner v. New Jersey, 329 U.S. 565, 573 (1947) (acknowledging the deleterious effects of unmeritorious or excessive claims on participation by legitimate bankruptcy claimants).

244. FED. R. BANKR. P. 3001(c)–(d). The proof-of-claim form also contains the following instructions:

> You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If the documents are not available, you must attach an explanation of why they are not available"; and "[y]ou must . . . attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed.

Official Bankruptcy Form 10 (2007), *supra* note 41.

245. FED. R. BANKR. P. 9011(b)(3).

246. *See, e.g.*, *In re* Cassell, 254 B.R. 687, 691 (B.A.P. 6th Cir. 2000) ("Proofs of claim must meet the standards of [Rule 9011.]"); *In re* Berghoff, No. 06-10375, 2006 WL 1716299, at *2 (Bankr. N.D. Ohio June 30, 2006) (finding that a mortgage lender violated Rule 9011 by including in a claim certain fees that were not warranted by existing law).

247. FED. R. BANKR. P. 3001(f).

documentation.[248] Some courts have concluded that failure to comply with Rule 3001 is not a permissible basis for disallowing a claim[249] because this behavior is not listed in § 502(b) of the Bankruptcy Code, which governs the allowance of claims.[250] A few jurisdictions have taken a different approach and ruled that incomplete claims documentation can be a basis for disallowing a claim.[251] The majority rule seems to be that a claim that does not comply with Rule 3001 loses its prima facie evidentiary effect, which shifts the burden to creditors to prove their claims.[252] However, courts usually require the debtor to advance some evidence that disputes the claim rather than merely pointing to noncompliance with the rule.[253] If the servicer is uncooperative and, for example, refuses to promptly provide a complete and comprehensible payment history, the debtor may have a difficult time actually forcing the creditor—the party in control of the records—to meet the burden that the rules impose upon it. An affidavit from the debtor may suffice in such cases, and the courts seem to be increasingly sympathetic to debtors' frustrations with obtaining information from mortgage servicers.[254]

The simplest route to boosting the reliability of mortgage claims is to revise § 502(b) to include the failure to provide the attached documentation

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248. *But see In re* Prevo, No. 08-30815, 2008 WL 4425799, at *3–4 (Bankr. S.D. Tex. Aug. 7, 2008) (issuing a show-cause order to determine whether the creditor should be required to pay the debtor's attorneys fees for objecting to a mortgage claim that was disallowed for failure of the creditor to meet its evidentiary burden).

249. *See, e.g., In re* Stoecker, 5 F.3d 1022, 1028 (7th Cir. 1993); *In re* Heath, 331 B.R. 424, 431–32 (B.A.P. 9th Cir. 2005); *In re* Gurley, 311 B.R. 910, 915–16 (Bankr. M.D. Fla. 2001) (all holding that the failure to comply with Rule 3001 either can be fixed by amending the claim or is not a valid objection), *see also* Becket, *supra* note 242, at 53 (concluding that disallowance on Rule 3001 grounds is not within a court's statutory authority because, under 28 U.S.C. § 2075, the bankruptcy rules are not supposed to "abridge, enlarge, or modify substantive rights").

250. 11 U.S.C. § 502(b) (2006).

251. *See, e.g., In re* Shaffner, 320 B.R. 870, 879 (Bankr. W.D. Mich. 2005) (permitting a trustee to refuse to administer the proof of claim as filed); *see also* NANCY H. DREHER & JOAN N. FEENEY, BANKRUPTCY LAW MANUAL § 6:4 (5th ed. 2008) ("There is a split of authority on whether the failure to comply with Rule 3001(c) requires disallowance of the claim."); *cf. In re* McLaughlin, No. 05-63927, 2007 WL 2571943, at *4 (Bankr. N.D. Ohio Aug. 31, 2007) (disallowing claims filed by a trustee pursuant to Rule 3004 because the trustee did not reasonably investigate the claims or provide documentation to support them).

252. *In re* Gilbreath, No. 08-32404-H4-13, 2008 WL 4569965, at *76 (Bankr. S.D. Tex. Oct. 14, 2008) (ruling that proofs of claim that failed to comply with Rule 3001 are not prima facie valid, and disallowing such claims when the creditor did not meets its burden of proof to prove the claims).

253. *See, e.g., In re* Campbell, 336 B.R. 430, 434 (B.A.P. 9th Cir. 2005) (holding that a proof of claim lacking documentation required by Rule 3001(c) is not disallowed unless the debtor's objection to the claim contests the amount of the debt and not merely the violation of the Rule); *In re* Stewart, No. 07-11113, 2008 WL 2676961, at *9 n.15 (Bankr. E.D. La. Apr. 10, 2008) (shifting the burden of proof onto the creditor because the debtor had objected and presented sufficient evidence to overcome the presumption of the claim's validity).

254. *See, e.g., In re* Heath, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005) (stating that a creditor's failure to provide information or to support its claim "in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim" (internal citations omitted)).

as a basis for the disallowance of claims. This reform would ratchet up the consequences for failing to attach a note or security interest. In effect, a creditor who could not validate the existence of the purported debt with a note (or could not adequately explain why a note was unavailable) could not receive more in bankruptcy than it would have been entitled to had it been put to its proof in a judicial-foreclosure lawsuit.[255] In this way, the bankruptcy process would be at least as rigorous as the state-law foreclosure schemes.

Another strategy is to squarely impose the burden of reviewing mortgage claims on trustees. The Bankruptcy Code already states that a trustee shall, "if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper."[256] Many trustees apparently believe that no purpose would be served by objecting to claims without the documentation required by law. For example, while notes were missing from 40% of claims, trustees filed only one or two objections that raised that issue.[257]

The U.S. Trustee Program could, in its program handbook, mandate the review of mortgage claims as an official duty of panel and standing trustees, and trustees could be evaluated, in part, on their fulfillment of this duty. This solution is informal, requiring no legislative reform. The proposal merely posits that the U.S. Trustee Program would ensure that trustees carry out the statutory mandate in a rigorous fashion. This solution eliminates the need to create incentives for debtors attorneys to make claims objections in the first instance. The U.S. Trustee Program could use standards and procedures that parallel those used when auditing debtors' schedules. If the Chapter 13 trustees' examinations revealed serious or systematic misconduct, the problems could be referred to the U.S. Trustee for enforcement activity. In 2007, the U.S. Trustee took a step in this direction by becoming involved in litigation over alleged wrongdoing by mortgage servicers.[258]

A complementary tactic to these enforcement strategies would improve the clarity of claims. The varying formats and levels of detail in the itemizations dramatically increase the costs of reviewing claims, rendering it prohibitively expensive and inefficient for the high-volume consumer bankruptcy system. If itemizations were standardized, it would be easier to train

255. *See supra* note 154 and accompanying text.

256. 11 U.S.C. § 704(a)(5) (2006).

257. *See supra* text accompanying note 152.

258. *See, e.g.*, Statement of the U.S. Tr. Regarding This Court's Order Requiring Countrywide Home Loans, Inc., [and Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. Attorneys and Personnel] to Appear and Show Cause Why [They] Should Not Be Sanctioned for Filing a Motion for Relief From Stay Containing Inaccurate Debt Figures and Inaccurate Allegations Concerning Payments Received from the Debtor, *In re* Parsley, 384 B.R. 138 (Bankr. S.D. Tex. 2008) (No. 05-90374) (evidencing the United States Trustee's willingness to become involved in litigation). However, the U.S. Trustee may have limited authority to pursue creditors for abusive claims practice because its powers are circumscribed by statute. *See supra* notes 116–18 and accompanying text.

legal assistants and junior attorneys to review claims. Standardization would also facilitate the development of computer programs to analyze creditors' calculations for items such as escrow accounts and arrearage payment streams. Indeed, creditors themselves have identified variations in local practice as an obstacle to accurate servicing.[259] A model itemization attachment was promulgated by a committee of mortgage-industry representatives, Chapter 13 trustees, and mortgage servicers.[260] The model attachment would require servicers to provide details such as the type of the loan, its interest rate, and any payment-adjustment dates.[261] It also sets out a standardized format for servicers to break out the amount of any pre-petition arrearages, categorize each charge, and report how many times each type of charge had been imposed. The Advisory Committee on Bankruptcy Rules should review the model itemization and consider incorporating it into the Official Form 10 and Rule 3001(a), at least for mortgage claims. Voluntary adoption seems unlikely as the form has not yet been adopted, despite its existence for many months. Notably, the participation of industry representatives in creating the model itemization does reflect some willingness by servicers to admit that their bankruptcy procedures need improvement.

The solutions outlined here would systematically improve mortgage claims.[262] Given the empirical evidence of widespread problems with mortgage claims, these approaches may be the most efficient solution. The realities of consumer bankruptcy practice may dictate structural solutions that do not rely on the voluntary participation of individual actors. While such reforms would modestly increase the administrative burdens, the benefits of increased reliability in mortgage claims justify these policy changes.

B. Bankruptcy as a Home-Saving Device

Mortgage claims are a key determinant of the outcomes of consumer bankruptcy cases. A core function of Chapter 13 bankruptcy is helping families save their homes,[263] which the Bankruptcy Code effectuates by

259. *Hearing*, *supra* note 58, at 5 (statement of Steve Bailey, Chief Executive for Loan Administration, Countrywide Financial Organization), *available at* http://judiciary.senate.gov/pdf/08-05-06Steve_%20Bailey_Testimony.pdf (testifying that, as a result of variations across jurisdictions in the rules governing bankruptcy, bankruptcy-loan servicing is a borrower-by-borrower process that requires manual input of data unique to each borrower, and that this type of processing can occasionally result in mistakes).

260. MODEL PROOF OF CLAIM ATTACHMENT, *supra* note 175, at 2–3.

261. The model attachment would also require the creditor to provide the Mortgage Electronic Registration System (MERS) number for the loan, the real property tax number and parcel number, and a contact person for the servicer (not just the servicer's attorney).

262. *Cf. In re* Coates, 292 B.R. 894, 899–900 (Bankr. C.D. Ill. 2003) (noting that the frequent appearance of attorneys fees and expenses in mortgage claims justifies a systematic approach to this aspect of Chapter 13 cases).

263. *See* 1 LUNDIN, *supra* note 47, § 129.1 ("[I]t is not unusual for rehabilitation of a home mortgage to be the principal reason for filing a Chapter 13 case.").

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permitting debtors to cure arrearages on mortgages over time.[264] Because mortgage creditors are most Americans' largest creditor, their actions in bankruptcies heavily influence debtors' success in saving their homes from foreclosure.[265] A family's ability to confirm a Chapter 13 plan or cure a default may turn on the amount fixed as being owed to the mortgage creditor.[266] Debtors cannot easily generate additional disposable income if alleged obligations to mortgagees magically increase or if fees multiply without justification. The debtor's ability to pay mortgage arrearages, as a practical matter, determines the success of a case. Plan confirmation turns on this issue. What is more, if the debtor misses any plan payments, the mortgage creditor frequently will seek relief from the stay to proceed with a foreclosure, and the debtor's bankruptcy may be dismissed. Thus, the amounts of mortgage proofs of claim have direct effects on bankruptcy's usefulness as a home-saving device.

Miscalculations about mortgage debt have grave consequences for families at nearly every point in the bankruptcy system. From the outset, debtors may be harmed if they make their bankruptcy-filing decisions without accurate knowledge of their mortgage debts. If debtors underestimate the amount of their outstanding obligations to mortgagees, which the data show occurs in the majority of cases, their attorneys may misadvise them about the feasibility of confirming a Chapter 13 plan and the likelihood that they can cure their mortgage defaults. Conversely, if debtors overestimate their arrearages, they could file bankruptcy without pursuing other types of relief, such as borrowing from families or friends, seeking forbearance from the mortgagee, or selling an asset. Debtors' inability to report their mortgage debts with reasonable accuracy indicates a serious shortcoming in the prebankruptcy counseling process. The data suggest that attorneys who do not verify the mortgage debt may give suboptimal advice to their clients about the advisability of Chapter 13 bankruptcy. This situation could be one factor that contributes to the low success rate of debtors completing Chapter 13 repayment plans.[267]

After families file for bankruptcy, discrepancies in debtors' and creditors' records of the amount of mortgage debt and incomplete mortgagee proofs of claim lead to either of two undesirable consequences. In most instances, the data show that debtors do not verify the amounts requested on

264. *See* 11 U.S.C. § 1322(b)(5) (2006) (providing debtors with the right to cure mortgage arrearages within a reasonable time).

265. *See* Bahchieva et al., *supra* note 1, at 74 ("Our results also suggest that rising mortgage debt has important consequences for federal bankruptcy policy.").

266. *See In re Coates*, 292 B.R. at 899 ("A debtor's obligation to cure the prepetition mortgage arrearage is enforceable as a condition of confirmation. A plan that fails to provide for a complete cure is not confirmable over the objection of the mortgagee.").

267. *See, e.g.*, Scott F. Norberg, *Consumer Bankruptcy's New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 AM. BANKR. INST. L. REV. 415, 439 (1999) (finding that approximately one-third of Chapter 13 debtors complete their plans).

mortgagees' claims and consequently risk overpaying those creditors. In so doing, debtors increase their burdens in confirming and completing their Chapter 13 plans. This outcome, however, saves debtors the litigation and negotiation costs of seeking clarification from the mortgagees. When mortgagees' claims are challenged, debtors face increased costs for their attorneys' time in this work. Proofs of claim with unexplained or impermissible fees, or without adequate documentation, drive up the expense of bankruptcy relief, a consequence that financially strapped families can ill afford.

Despite these costs, debtors may benefit substantially by challenging mortgage claims. Bloated claims make it more difficult for a family to confirm repayment plans. Because arrearages must be paid in full, every dollar of savings is a direct benefit to a family who would have to dismiss its Chapter 13 case and surrender its home if the original arrearage amount were allowed to stand. Improved accuracy by mortgage servicers in bankruptcy cases could save litigation costs in response to motions for relief from the stay that are based on incorrect accounting.

Scrutinizing proofs of claim to ensure that only valid fees are included in arrearage claims can help reduce the burdens that debtors face in making all payments required to complete their Chapter 13 plans. Reduced arrearages could improve the success rate of debtors in completing Chapter 13 plans and receiving discharges. Better outcomes in Chapter 13 could help encourage more debtors to consider this alternative, which could in turn boost recovery to all creditors. Further, ensuring that the mortgagee's accounting is accurate at the time of the confirmation can help prevent disputes about the amount of mortgage debt that remains to be paid after the bankruptcy case is complete.

Debtors would benefit substantially if consumer bankruptcy attorneys incorporated a routine review of mortgage claims in the scope of their representation. Given the recent escalation in attorneys fees that occurred after the Bankruptcy Abuse Protection and Consumer Protection Act (BAPCPA),[268] it is discouraging to suggest that the solution lies in passing the costs of claims review along to debtors. The structural changes suggested in the prior subpart would reduce the costs of claims review in various ways, and in some instances they would change the incentives of debtors attorneys to monitor the accuracy of claims.

Taking those suggestions a step further, attorneys need to be educated about how challenging mortgage claims can potentially benefit their practices. While challenging a claim does not per se generate revenue for an attorney, claims review can reveal other causes of action. Most obviously, if

268. GOV'T ACCOUNTABILITY OFFICE, DOLLAR COSTS ASSOCIATED WITH THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, at 25, 26 fig.7 (2008) (reporting analysis that showed that the Chapter 13 standard fee had increased after BAPCPA in nearly all judicial districts for which information was collected).

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debtors attorneys request information from mortgage servicers and do not receive responses or receive inadequate responses, the servicers may have violated RESPA.[269] If successful, these claims entitle plaintiffs to actual damages and the costs of reasonable attorneys fees.[270] An objection may also generate evidence of a practice that can be challenged under a state's unfair or deceptive practices act, which typically also permits the recovery of attorneys fees if the plaintiff is successful.[271] In some instances, review of mortgage claims can reveal causes of action that allege violations in how the loan was originated. For example, a review of a loan's statutorily required Truth in Lending disclosure can give rise to a claim for actual or statutory damages, or even rescission of the loan under some circumstances.[272] The Truth in Lending Act[273] also is fee-shifting so that mortgage companies may be ordered to pay the attorneys fees and costs of successful actions.[274] These examples show how bankruptcy can be the locus for identifying a variety of illegal lending activity. Reviewing mortgage claims should be merely the first step in helping a family stop a foreclosure or untangle itself from the harm of an inappropriate or predatory home loan.

The data provide systematic evidence that mortgage servicers do not adequately document their claims and may be engaged in overreaching in assessing fees and calculating outstanding obligations. The current state of mortgage claims puts debtors at risk. Each time a family loses its home based on an inaccurate claim, the bankruptcy system fails. Inflated mortgage claims undercut a core bankruptcy policy—helping families in financial trouble save their homes and right themselves financially.

C. Sustainable Homeownership Policy

The findings on the unreliability of mortgagees' claims have implications beyond bankruptcy. All families who are trying to pay off a home loan are put at risk if subject to poor or predatory mortgage servicing. Most families rely on their mortgage servicers to credit payments, calculate payoff balances, and apply fees only when justified. Most families do not and cannot separately verify the servicers' accounting. Bankruptcy data provide a lens for examining whether Americans should trust servicers to carry out these tasks and whether the servicing industry is adequately regulated.

It seems likely that default by a borrower may exacerbate servicing problems because default triggers the imposition of fees and sometimes a

269. *See* 12 U.S.C. § 2605(e) (2006) (detailing the proper response to a borrower's request).

270. *Id.* § 2605(f)(3).

271. DOUGLAS J. WHALEY, PROBLEMS AND MATERIALS ON CONSUMER LAW 481 (3d ed. 2002).

272. 15 U.S.C. §§ 1635, 1640 (2006).

273. *Id.* §§ 1601–1667f.

274. *Id.* § 1640(a)(3).

transfer to a loss-mitigation department or even to a new servicer. Nonetheless, the reality is that most defaults and pending foreclosures occur outside the bankruptcy system.[275] Thus, most families in default on their mortgages lack the protections—albeit, the existing weak protections—of the bankruptcy claims process to shield them from impermissible or unreasonable default fees. Indeed, servicers' accounting should be better inside the bankruptcy system than outside of it because, at least in theory, a bankruptcy is a check on mortgage overreaching. If a Chapter 13 case is filed, the servicer usually hires an attorney who is supposed to review the claim for accuracy and illegality, and the servicer knows that homeowners usually have retained an attorney to represent them. Not only are mortgagees' misbehavior and mistakes probably not confined to bankruptcy debtors, the frightening prospect is that servicing problems among non-bankrupt families who are behind on their mortgages may be even worse than the bankruptcy data reveal.

Very recent case law lends legitimacy to this fear. In late 2007, two federal courts in Ohio dismissed dozens of foreclosure lawsuits on standing grounds because the plaintiffs could not prove they were the record owners of the mortgage and note.[276] Two class action lawsuits are pending that allege that consumers paid bloated, illegal fees for default charges.[277] Mortgage servicers are increasingly being fingered as the primary parties who are frustrating homeowners' efforts to obtain modifications of unaffordable loans.[278]

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275. Foreclosure filings appear to outnumber bankruptcy cases filed by homeowners by a four-to-one ratio. In 2006, there were 597,965 nonbusiness bankruptcy filings. Press Release, Admin. Office of the U.S. Courts, Bankruptcy Filings Plunge in Calendar Year 2006 (Apr. 26, 2007), *available at* http://www.uscourts.gov/Press_Releases/bankruptcyfilings041607.html. The best available data, which is from the 2001 Consumer Bankruptcy Project, indicate that about 52.5% of all families in bankruptcy are homeowners. Bahchieva et al., *supra* note 1, at 92. In 2006, there were 1,259,118 foreclosure filings. Press Release, RealtyTrac, More Than 1.2 Million Foreclosure Filings Reported in 2006 (Jan. 25, 2007), *available at* http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=1855&accnt=64847; *see also* Dennis R. Capozza & Thomas A. Thomson, *Subprime Transitions: Lingering or Malingering in Default?*, 33 J. REAL ESTATE FIN. & ECON. 241, 241–58 (2006) (reporting that in a study of borrowers who were identified as ninety-days delinquent on their loans, only 11% had filed for bankruptcy eight months later).

276. *See, e.g.*, *In re* Foreclosure Cases, 521 F. Supp. 2d 650, 654 (S.D. Ohio 2007) (giving plaintiffs thirty days to submit evidence proving that they had standing to file the complaint); *In re* Foreclosure Cases, No. 07CV2282, 2007 WL 3232430, at *3 (N.D. Ohio Oct. 31, 2007) (finding that plaintiffs could not show proof of ownership of the note or mortgage).

277. *See In re* Harris, No. 03-44826, 2008 WL 924939, at *1 (Bankr. S.D. Tex. Jan. 16, 2008) (alleging that default servicers had impermissible and undisclosed arrangements with attorneys to retain a portion of the fees); Complaint at 2, Trevino v. Merscorp, Inc., No. 07-568 (D. Del. Nov. 6, 2007) (alleging that Merscorp overcharged and extracted improper fees from mortgage borrowers).

278. *See* Eggert, *supra* note 23, at 286–87 (describing servicers' self-interest as a barrier to loan modification); Larry Cordell et al., *The Incentives of Mortgage Servicers: Myths and Realities* 3 (Fed. Reserve Bd., Fin. and Econ. Discussion Series, Paper No. 2008-46, 2008) (reporting that available evidence suggests that the inadequate loss-mitigation capacity of mortgage servicers and certain servicing practices are factors contributing to avoidable disclosures).

Poor mortgage servicing is an assault on America's policy of promoting sustainable home ownership. If families are hit with unreasonable fees and cannot understand what is owed on their mortgage loans, they are at risk of foreclosure. Servicing abuse can begin before bankruptcy, but may ultimately drive some families into bankruptcy as a last resort for trying to address this issue. The current policy debate on home ownership is focused on loan-origination issues, such as whether mortgage brokers or lenders placed families in appropriate loans.[279] Servicing problems may be less visible, but no less harmful. Research shows that the quality of preventive servicing affects the incidence and outcome of default.[280] The rising foreclosure rate will only escalate the number of families who must struggle to understand the amounts of their arrearages and who are at risk of having to pay unreasonable default costs to save their homes.[281] Policies that aim to protect families from foreclosure should address the weaknesses in mortgage servicing and not just alter the process for loan origination. For families who are already trapped in unaffordable loans, other relief will come too late. Improving mortgage servicing would provide immediate protection to families facing foreclosure.

Paying a mortgage is most families' most important financial obligation. Unreliable servicing can cause ordinary families to overpay, even for those who avoid default and bankruptcy. For example, inaccurate payoff balances can penalize families when they refinance a home loan. Even families who try to get ahead on their mortgages may lose such benefits if servicers fail to credit additional payments to principal, instead holding them in suspense or treating them as prepayments despite instructions to the contrary from the borrowers. These practices create a needless barrier to home ownership.

Under the current regime, consumers have no choice in servicers. Any market exists solely based on the needs of lenders and bond issuers, whose concerns are distinct—if not opposed—to borrowers. Jack Guttentag, emeritus professor at the Wharton School of Business, has suggested that consumers be allowed to "fire" their servicers, essentially receiving a one-

279. *See Prepared Statement of the Federal Trade Commission on Home Mortgage Disclosure Act Data and FTC Lending Enforcement: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. 5–9 (2007) (statement of Lydia B. Parnes, Director of the Bureau of Consumer Protection, Federal Trade Commission), *available at* http://www.ftc.gov/os/testimony/P064806hdma.pdf (describing the FTC's collection of data on the pricing of subprime mortgages marketed to consumers)

280. *See* Pennington-Cross & Ho, *supra* note 59, at 19 (finding that the probability of loan default varied widely by loan servicer, even after controlling for loan-, housing-, and labor-market conditions).

281. *See generally* Press Release, RealtyTrac, Foreclosure Activity Up Over 55% in First Half of 2007 (July 30, 2007), *available at* http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=2932&accnt=64847 (summarizing the results of a mid-year foreclosure-market report showing dramatic increases in foreclosure filings nationwide); Danielle Reed, *Rising Foreclosure Rates Point to a Normalizing Home Market*, WALL ST. J. ONLINE, Apr. 17, 2006, http://www.realestatejournal.com/buysell/markettrends/20060417-reed.html (discussing rising foreclosure rates and mortgage delinquencies in the United States in the first half of 2006).

time option to choose a different servicer.[282] He postulates that servicers would compete for this additional business, driving up quality, and balancing servicers' incentives between lenders and borrowers.[283] Another policy response to concerns about mortgage servicing is to step up enforcement action. However, single actions against egregious servicers may not produce systematic reform, as the Mortgage Study data suggest that servicing issues are industry-wide. A bigger problem may simply be focusing HUD on its duties to enforce RESPA and to police mortgage servicers. HUD's Web site for complaints does not even mention mortgage servicing,[284] and the FTC, rather than HUD, has taken the lead in recent actions against servicers.[285]

The Mortgage Study data suggest that policy makers who focus on promoting home ownership need to concern themselves with mortgage servicing, which is a crucial aspect to enabling families to achieve home ownership. Mortgage-servicing abuse weakens families' efforts to manage their mortgages successfully and can result in families being wrongfully deprived of their homes through foreclosure or unsuccessful outcomes in bankruptcy. Mortgagees' failure to honor the terms of their loans and applicable law weakens America's home-ownership policies and threatens families' financial well-being.

The findings are a tangible reminder that merely enacting a law does not ensure its success. Without the correct structural incentives and without robust safeguards, a law can fail to deliver its promised protections. In the consumer context, this observation has particular power. Consumers face disadvantages to industry in a legal system: consumers are not repeat players; they have fewer resources; and they do not have institutional incentives to shape the system. The claims process in bankruptcy exemplifies the difficulty in developing and monitoring an effective legal system. The findings should caution policy makers and advocates from blindly trusting in the written law as a decontextualized instrument to shape behavior.

V. Conclusion

Hundreds of thousands of Americans file Chapter 13 bankruptcy each year hoping to save their homes from foreclosure. Reliable claims are crucial to the success of the bankruptcy system because the claims mechanism implements the two core goals of bankruptcy policy: to help debtors obtain a fresh start by paying their debts and to ensure that creditors receive a fair

282. Jack Guttentag, Borrowers Should Be Able to Fire Mortgage Servicers, http://www.mtgprofessor.com/A%20%20Servicing/borrowers_should_be_able_to_fire_servicers.htm.

283. *Id.*

284. *See* U.S. Dep't of Housing and Urban Dev., Complaints, *supra* note 115 (handling complaints for housing discrimination; landlord–tenant disputes; manufactured-housing issues; land sales; deceptive contractors; and fraud, waste, and abuse).

285. *See* DIV. OF CONSUMER & BUS. EDUC., *supra* note 48 (describing what consumers should expect of mortgage servicers and the process for filing complaints against servicers).

share of debtors' assets. From external indicia, the claims process in consumer bankruptcy cases seems like an exemplar of a well-designed legal system that balances the interests of consumers and industry. The claims rules are unambiguous; all parties typically are represented; the process is uniform; the federal judicial system brings gravitas to the procedures; and specialized actors such as bankruptcy judges and trustees are present to police the system.

Yet, despite these reassuring features, the empirical data show that many mortgagees fail to comply with applicable law. The data establish a widespread, current practice of filing incomplete claims with vaguely identified fees. This hinders any meaningful or effective scrutiny of whether mortgage companies are only charging the correct amounts to struggling homeowners. The structural incentives are insufficient to uphold bankruptcy's potential as a home-saving device and to ensure the integrity of the bankruptcy system. The problems with mortgagees' calculations are likely to be even worse outside of bankruptcy, where the rules are less clear and the procedural safeguards are fewer. Systematic reform of the mortgage-servicing industry is needed to protect all homeowners—inside and outside of bankruptcy—from overreaching or illegal behavior. The findings on the unreliability of mortgage servicing are a high-stakes reminder of the challenges of designing a legal system that actually functions to protect consumers.

An Empirical Study of Consumer Bankruptcy Papers

by

*The Honorable Steven W. Rhodes**

I. INTRODUCTION

An empirical study was performed on the schedules, the statements of financial affairs and other initial papers in 200 randomly chosen consumer bankruptcy cases filed in the first half of 1998 in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division at Detroit. The objective of the study was to measure the care and understanding with which consumer debtors and their attorneys prepare these initial bankruptcy papers.[1] The methodology was to test the completeness and internal consistency of nineteen specific disclosures. Other errors were noted and catalogued as found.

Three conclusions are drawn from this study. First, the lack of care and understanding of the debtors and their attorneys in fulfilling the disclosure requirements is palpable and disturbing. Second, the Official Bankruptcy Forms do not adequately communicate the disclosure requirements. Third, in some ways, the disclosure requirements are unrealistic and unnecessary, and serve only to make knaves of otherwise honest debtors and their attorneys.[2]

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I want to thank the many individuals who assisted and encouraged this project. When preliminary results were presented to the Detroit Consumer Bankruptcy Association, the Bankruptcy Section of the Eastern District Federal Bar Association and the Eastern District Trustee's Association, several listeners gave me very helpful comments and suggestions. Both Dean Nancy Rapoport of the University of Nebraska College of Law and Professor Elizabeth Warren of the Harvard Law School spent some time with me discussing the project, giving me guidance and encouragement. Tim Reagan of the Federal Judicial Center reviewed some of the statistical aspects of the study with me. Bankruptcy Judges Arthur J. Spector of Bay City and Keith M. Lundin of Nashville assisted with edits on the nearly-final draft. Finally, Kelli Dexter, Caroline Edwards and Lisa Harris performed their wonderful law clerk magic. Thanks to all. Of course, the mistakes are all mine.

[1]The study examined only the initial papers. Amended papers were not examined.

[2]This characterization is borrowed from *Memphis Bank & Trust Co. v. Whitman*, 692 F.2d 427, 432 (6th Cir. 1982) (Courts should not allow a debtor to obtain money through dishonesty and keep the gain by filing a chapter 13 case within a few days. This "runs the risk of turning otherwise honest consumers and shopkeepers into knaves."). As stated by the National Bankruptcy Review Commission, "While there will never be a substitute for good legal advice, no one benefits when a system for financially distressed consumers becomes a trap for the unwary." 1 NATIONAL BANKRUPTCY REVIEW COMMISSION, BANK-

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Any effort to motivate more complete, accurate and careful disclosures must address all of these issues.

The study also compared subgroups of the sample to determine whether the disclosure problems predominated in any of these subgroups. Individual debtors were compared to joint debtors. Married, separated and single debtors were compared. Debtors whose attorneys filed in higher volumes were compared to debtors with other attorneys. None of these comparisons revealed any significant distinctions in the results.

The study also examined for any correlations with the economic characteristics of the cases, including fees charged and paid, assets, liabilities, expenses and income, and again found no significant correlations.

Part II reviews the disclosure obligations established in the Bankruptcy Code and the Bankruptcy Rules, and the standards established in the case law. Part III discusses the methodology of the study. Part IV reviews the specific test questions and their results. Part V compiles the results of the study and reviews the subgroup and the correlation analyses. Part VI reviews the current remedies for incomplete or inaccurate schedules and concludes that because these remedies are cumbersome, time consuming and expensive, they have not been effective in addressing the issues raised here. Finally, Part VII suggests some remedies, both local and national, to address the problem.

The scope of this study is limited in significant respects. First, no investigation was made beyond the filed papers to determine the truth of any disclosures. The study was not designed to detect or measure fraud or intentional concealment. Second, although the motivation for this study was the author's nagging suspicion that consumer debtors' bankruptcy papers are a persistent and widespread problem,[3] this study was not designed to prove that

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RUPTCY: THE NEXT TWENTY YEARS, NATIONAL BANKRUPTCY REVIEW COMMISSION FINAL REPORT, 235 (October 20, 1997) (hereinafter, "COMMISSION REPORT").

This article is based on the premise that it is "a mistake to suppose that every act of bankruptcy is a fraudulent act, and every bankrupt, perforce, a knave." Summers v. Abbot, 122 F. 36, 38 (8th Cir. 1903). It is also presumed that most debtors qualify as "honest but unfortunate." Grogan v. Garner, 498 U.S. 279, 287, 111 S. Ct. 654, 659, 112 L. Ed. 2d 755 (1991); Local Loan Co. v. Hunt, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230 (1934). On the other hand, it is recognized that "[d]ebtors are not perfectly trustworthy," Payne v. Wood, 775 F.2d 202, 206 (7th Cir. 1985), *cert. denied*, 475 U.S. 1085, 106 S. Ct. 1466, 89 L. Ed. 2d 722 (1986), and therefore the trustee is empowered to "investigate the financial affairs of the debtor." 11 U.S.C. §§ 704(4) and 1302(b)(1).

[3]*See* In re Attanasio, 218 B.R. 180, 229 (Bankr. N.D. Ala. 1988), *infra* note 123 and accompanying text; *In re* Bruzzese, 214 B.R. 444, 450 (Bankr. E.D.N.Y. 1997), *infra* note 168 and accompanying text.

Other investigators have observed these kinds of problems. *See, e.g.*, Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Use of Empirical Data in Formulating Bankruptcy Policy*, 50 SPG LAW & CONTEMP. PROBS. 195, 229 (1987) ("We have found a large number of errors in the completed bankruptcy forms."); Susan D. Kovac, *Judgment-Proof Debtors in Bankruptcy*, 65 AM. BANKR. L.J. 675, 767 n.56 (1991) (reporting that the specific information provided by debtors on the statement of

suspicion beyond the one court location and the limited time period from which the study cases were drawn. Third, because only a portion of the disclosures was tested, the study was not designed to expose all of the omissions and inconsistencies in the papers. The study cases may have additional problems not quantified in this study. Nevertheless, the study does establish substantial cause for concern, and for further study and consideration.

II. THE DISCLOSURE REQUIREMENTS IN CONSUMER BANKRUPTCY CASES

A. The Statutory Basis

Section 521(1) of the Bankruptcy Code requires the debtor to file "a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs[.]"[4] With respect to consumer debts secured by property of the estate, § 521(2)(A) requires the debtor to file "a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property[.]"[5]

Rule 1007(b)(1) of the Federal Rules of Bankruptcy Procedure supplements the requirements of the Bankruptcy Code by requiring that the debtor also file "a schedule of executory contracts and unexpired leases[.]"[6] This rule requires that all of these disclosures be "prepared as prescribed by the appropriate Official Forms."[7] Rule 1008 then provides that all such papers "shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746."[8] Rule 9009 provides, "The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations

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financial affairs regarding lawsuits was "often wrong," and that some debtors who suggested that judgments or garnishments had been issued against them gave no specifics).

[4]11 U.S.C. § 521(1) (1994).

[5]11 U.S.C. § 521(2)(A) (1994).

[6]Fed. R. Bankr. P. 1007(b)(1).

[7]*Id.*

[8]Fed. R. Bankr. P. 1008. Section § 1746 of the United States Code (1994) provides for this form of declaration, "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct." The verification in the official form for the schedules is, "I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of __ sheets, and that they are true and correct to the best of my knowledge, information, and belief." Official Bankruptcy Form 6. The verification in the official form for statement of financial affairs omits the language, "to the best of my knowledge information and belief," and is thus closer to the statutory format. It provides, "I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct." Official Bankruptcy Form 7. There is no official explanation for the difference.

as may be appropriate."[9]

In addition, the Code and the Rules create a special obligation on the debtor in disclosing assets. Section 521(3) obligates the debtor to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties."[10] Under Rule 2015(a)(1), the trustee's duties include filing a complete inventory of the debtor's property, if that has not already been done.[11] Further, Rule 4002(4) specifically requires the debtor to "cooperate with the trustee in the preparation of an inventory."[12]

Very little official comment is available relating to the purposes of the required disclosures. The purposes of the disclosures are not discussed in the advisory committee notes to Bankruptcy Rules 1007 or 9009. The advisory committee note to Official Bankruptcy Form 1 (the voluntary petition) states the purposes of only a few of its disclosure requirements.[13] The advisory committee note to Official Bankruptcy Form 6 (the schedules) obliquely suggests that the requirements of the schedules relate to the trustee's functions, stating, "The schedules require a complete listing of assets and liabilities but leave many of the details to investigation by the trustee."[14] Finally, nothing in the notes to Official Bankruptcy Form 7 (the statement of financial affairs) suggests the purposes of any of its required disclosures.

B. The Requirements According to Case Law

In describing the nature and extent of the disclosure obligations of debtors in chapter 7, the judicial pronouncements in the cases are firm:[15]

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[9]Fed. R. Bankr. P. 9009.

[10]11 U.S.C. § 521(3) (1994).

[11]Fed. R. Bankr. P. 2015(a)(1).

[12]Fed. R. Bankr. P. 4002(4). *See also In re* Moses, 792 F. Supp. 529, 531 (E.D. Mich. 1992); Kaler v. Olmstead (*In re* Olmstead), 220 B.R. 986, 998 (Bankr. D.N.D. 1998); *In re* Mohring, 142 B.R. 389, 394 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd without op.*, 24 F.3d 247 (9th Cir. 1994) (unpublished table decision).

[13]For example, this advisory committee note states that the requirement to disclose a prior bankruptcy in the petition is "to alert the trustee to cases in which an objection to discharge pursuant to § 727(a)(8) or (9) or a motion to dismiss under § 109(g) may be appropriate." Official Bankruptcy Form 1 advisory committee note. The same note states that the purpose of the requirement to disclose information about pending related cases is so that the clerk can "assign the case to the judge to whom any related case has been assigned." *Id.* The statistical information on the petition is required "to assist the clerk in providing statistical information required by the Director of the Administrative Office of the United States Courts pursuant to the Congressional reporting requirements of 28 U.S.C. § 604." *Id.*

[14]Official Bankruptcy Form 6 advisory committee note.

[15]Most of the case law interpreting the disclosure requirements arises in context of objections to the debtor's discharge under 11 U.S.C. §§ 727(a), which provides that the debtor shall be granted a discharge, unless:

> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be, transferred, removed, destroyed, mutilated, or concealed—

"A debtor's complete disclosure is essential to the proper administration of the bankruptcy estate."[16]

"The veracity of the [debtor's] statements is essential to the successful administration of the Bankruptcy Code."[17]

"The obligation of full disclosure is crucial to the integrity of the bankruptcy process."[18]

"The debtors have a duty to truthfully answer questions presented in the various schedules and filings carefully, completely and accurately."[19]

"The debtor is imposed with a paramount duty to carefully consider all questions included in the Schedules and Statement and see that each is answered accurately and completely."[20]

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

. . .

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account[.]

See infra notes 124-27 and accompanying text.

[16]Cohen v. McElroy (*In re* McElroy), 229 B.R. 483, 488 (Bankr. M.D. Fla. 1998). *See also In re* Sochia, 231 B.R. 158, 160 (Bankr. W.D.N.Y. 1999).

[17]Van Roy v. Watkins (*In re* Watkins), 84 B.R. 246, 250 (Bankr. S.D. Fla. 1988) (citing Chalik v. Moorefield (*In re* Chalik), 748 F.2d 616, 618 (11th Cir. 1984)).

[18]*In re* Hyde, 222 B.R. 214, 218 (Bankr. S.D.N.Y. 1998), *rev'd on other grounds*, 235 B.R. 539 (S.D.N.Y. 1999) (citing *In re* Wincek, 202 B.R. 161, 166 (Bankr. M.D. Fla. 1996), *aff'd*, 208 B.R. 238 (M.D. Fla. 1996) ("[F]ull disclosure of all relevant information has always been an important policy of the bankruptcy laws." (internal quotations and citations omitted) (alteration in original)).

[19]*In re* Famisaran, 224 B.R. 886, 891 (Bankr. N.D. Ill. 1998). *See also* Cole Taylor Bank v. Yonkers (*In re* Yonkers), 219 B.R. 227, 232 (Bankr. N.D. Ill. 1997); National Am. Ins. Co. v. Guajardo (*In re* Guajardo), 215 B.R. 739, 741 (Bankr. W.D. Ark. 1997); United States v. Trembath (*In re* Trembath), 205 B.R. 909, 914 (Bankr. N.D. Ill. 1997); Netherton v. Baker (*In re* Baker), 205 B.R. 125, 131 (Bankr. N.D. Ill. 1997), *motion to amend judgment denied*, 206 B.R. 510 (Bankr. N.D. Ill. 1997); *In re* Robinson, 198 B.R. 1017, 1022 n.6 (Bankr. N.D. Ga. 1996); Torgenrud v. Benson (*In re* Wolcott), 194 B.R. 477, 486 (Bankr. D. Mont. 1996); Hollar v. United States (*In re* Hollar), 184 B.R. 25, 29 (Bankr. M.D.N.C. 1995), *aff'd*, 188 B.R. 539 (M.D.N.C. 1995), *aff'd*, 92 F.3d 1179 (4th Cir. 1996) (unpublished table decision available at 1996 WL 442883); Cundiff v. Wiethuchter (*In re* Wiethuchter), 147 B.R. 193, 199 (Bankr. E.D. Mo. 1992); Jones v. United States (*In re* Jones), 134 B.R. 274, 279 (N.D. Ill. 1991); Banc One, Texas, N.A. v. Braymer (*In re* Braymer), 126 B.R. 499, 502 (Bankr. N.D. Tex. 1991).

[20]Casey v. Kasal (*In re* Kasal), 217 B.R. 727, 734 (Bankr. E.D. Pa. 1998), *aff'd*, 223 B.R. 879 (E.D. Pa. 1998). *See also* FDIC v. Sullivan (*In re* Sullivan), 204 B.R. 919, 942 (Bankr. N.D. Tex. 1997); Morton v. Dreyer (*In re* Dreyer), 127 B.R. 587, 593-94 (Bankr. N.D. Tex. 1991); MacLeod v. Arcuri (*In re* Arcuri), 116 B.R. 873, 879-80 (Bankr. S.D.N.Y. 1990) ("A debtor has an 'affirmative duty' to identify all assets, liabilities, and to answer all questions fully and with the utmost candor. Creditors and those charged with administration of the bankruptcy estate are entitled to a 'truthful' statement of the debtor's financial condition." (citations omitted)); Friedman v. Sofro (*In re* Sofro), 110 B.R. 989, 991 (Bankr. S.D. Fla. 1990).

But see Hoc, Inc. v. McAllister (*In re* McAllister), 215 B.R. 217, 233 n.8 (Bankr. N.D. Ala. 1996) ("The purpose of the official forms is to provide basic information regarding a debtor's assets, liabilities and

> "The burden is on the debtors to complete their schedules accurately."[21]
> "The burden is on the debtors to use reasonable diligence in completing their schedules and lists."[22]
> "Candor, accuracy and integrity are required of a debtor in bankruptcy."[23]
> "Even if the debtor thinks the assets are worthless he must nonetheless make full disclosure."[24]
> "[S]chedules are to be complete, thorough and accurate in order that creditors may judge for themselves the nature of the debtor's estate."[25]
> "The bankruptcy laws impose a strict obligation on debtors to file complete and accurate schedules."[26]
> "If there is any doubt or uncertainty whatsoever as to a possible interest in any property, the asset should be scheduled with an appropriate explanation."[27]

The obligations of the debtor's attorney in this context have also been addressed in the cases:[28]

> The duty of reasonable inquiry imposed upon an attorney by Rule 11 and by virtue of the attorney's status as an officer of the court owing a duty to the integrity of the system requires that the attorney (1) explain the requirement of full, complete, accurate, and honest disclosure of all information required of a debtor; (2) ask probing and pertinent questions designed to elicit full, complete, accurate, and honest disclosure of all information required of a debtor; (3) check the

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financial affairs. They are not intended to be made a comprehensive record or journal of the debtor's business dealings.").

[21]Rion v. Spivey (*In re* Springer), 127 B.R. 702, 707 (Bankr. M.D. Fla. 1991). *See also* Faden v. Insurance Co. of N. Am. (*In re* Faden), 96 F.3d 792, 795 (5th Cir. 1996).

[22]Lubeck v. Littlefield's Restaurant Corp. (*In re* Fauchier), 71 B.R. 212, 215 (B.A.P. 9th Cir. 1987). *See also In re* Matthews, 154 B.R. 673, 678 (Bankr. W.D. Tex. 1993) (citing *In re* Braymer, 126 B.R. at 502).

[23]Holder v. Bennett (*In re* Bennett), 126 B.R. 869, 875 (Bankr. N.D. Tex.1991). *See also Wiethuchter*, 147 B.R. at 199 ("[A]ll debtors have a duty to update the schedules they file with the Bankruptcy Court[.]").

[24]Armstrong v. Lunday (*In re* Lunday), 100 B.R. 502, 508 (Bankr. D.N.D. 1989). *See also* United States v. Haught (*In re* Haught), 207 B.R. 269, 271 (Bankr. M.D. Fla. 1997).

[25]Garcia v. Coombs (*In re* Coombs), 193 B.R. 557, 563-64 (Bankr. S.D. Cal. 1996) (quoting *Lunday*, 100 B.R. at 508). *See also Sullivan*, 204 B.R. at 942.

[26]*In re* Dubberke, 119 B.R. 677, 680 (Bankr. S.D. Iowa 1990).

[27]American State Bank v. Montgomery (*In re* Montgomery), 86 B.R. 948, 959 (Bankr. N.D. Ind. 1988).

[28]*See, e.g., Robinson*, 198 B.R. at 1024; *In re* Armwood, 175 B.R. 779, 789 (Bankr. N.D. Ga. 1994); *Matthews*, 154 B.R. at 680; *In re* Huerta, 137 B.R. 356, 379 n.8 (Bankr. C.D. Cal. 1992).

> debtor's responses in the petition and Schedules to assure they are internally and externally consistent; (4) demand of the debtor full, complete, accurate, and honest disclosure of all information required before the attorney signs and files the petition; and (5) seek relief from the court in the event that the attorney learns that he or she may have been misled by a debtor.[29]

The connection between the debtor's obligation to file complete and accurate schedules and the fair administration of the bankruptcy case is clear.[30] This administration includes "determining whether crimes have been committed, whether objections to exemptions should be filed, and whether property should be claimed for the estate or abandoned."[31] To a substantial extent the trustee's ability to perform the duties set forth in 11 U.S.C. § 704 depends on the accuracy and completeness of debtor's disclosures.[32] Under 11 U.S.C. § 554(c), only scheduled property (not otherwise administered) is deemed

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[29]*Armwood*, 175 B.R. at 789 (citations omitted). *See also Aetna Fin. Co. v. Martinez (In re Martinez)*, 22 B.R. 419, 421 (D.N.M. 1982) ("We would also remind the debtors' attorney that it is his duty as an officer of this court to take all possible steps to assure himself that the information listed in his clients' petition is correct.").

[30]*See supra* notes 16-17 and cases cited therein. *See also* North River Ins. Co. v. Baskowitz (*In re* Baskowitz), 194 B.R. 839, 843 (Bankr. E.D. Mo. 1996) ("The dual purposes of a Chapter 7 bankruptcy case are to grant the honest debtor a discharge of his or her prepetition debts, and to provide a mechanism for the fair and orderly distribution of the debtor's assets that are subject to administration by the Trustee. These purposes are [only] realized when a debtor complies with the requirement to submit accurate and complete information concerning identification of creditors and assets.").

[31]*In re* Gaines, 106 B.R. 1008, 1013 (Bankr. W.D. Mo. 1989), *rev'd on other grounds*, 121 B.R. 1015 (W.D. Mo. 1990). *See also* Payne v. Wood, 775 F.2d 202, 206 (7th Cir. 1985) ("The requirement that the debtor list the property serves at least two functions. One is to settle claims of title, so that on the day of discharge everyone knows who owns what. The other is to allow the trustee to decide which claims to challenge."); *Andermahr v. Barrus (In re* Andermahr), 30 B.R. 532, 533 (B.A.P. 9th Cir. 1983); First Nat'l Bank of Mason City, Iowa v. Cook (*In re* Cook), 40 B.R. 903, 906 (Bankr. N.D. Iowa 1984) ("The purpose of the question [on the statement of financial affairs asking whether the debtor has made any transfers of property in the year preceding the filing of the bankruptcy petition] is to allow the trustee and the creditors of the debtor to determine if there should be other assets in the bankruptcy estate.").

[32]Section 704 provides:

> The trustee shall—
>
> (1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;
>
> . . .
>
> (3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;
>
> (4) investigate the financial affairs of the debtor;
>
> (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
>
> (6) if advisable, oppose the discharge of the debtor[.]

abandoned to the debtor when the case is closed.[33] In addition, the debtor's financial rehabilitation can be advanced by preparing and filing complete and accurate papers.[34]

In chapter 13 cases, the schedules play a uniquely significant role. For example, the schedules are considered in determining whether the debtor meets the eligibility requirements for the debt limits in chapter 13.[35] The schedules also assist in determining whether the debtor's plan was filed in good faith,[36] and whether to dismiss or convert the case for cause.[37] They are also considered in determining whether the plan proposes to pay creditors at least what they would receive in a hypothetical chapter 7 liquidation.[38] Finally, the schedules are used to evaluate whether the plan meets the confir-

[33]Jeffrey v. Desmond, 70 F.3d 183, 186 (1st Cir. 1995). *See also* Vreugdenhill v. Navistar Int'l Transp. Corp., 950 F.2d 524, 525-26 (8th Cir. 1991). Section 554(c) provides:

> [A]ny property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

[34]"[T]he debtors themselves are better served in their financial rehabilitation efforts if they can develop clear and complete pictures of their financial condition." COMMISSION REPORT, *supra* note 2, at 108.

[35]Section 109(e) establishes the secured and unsecured debt limits for chapter 13 debtors. *See* Comprehensive Accounting Corp. v. Pearson (*In re* Pearson), 773 F.2d 751, 757 (6th Cir. 1985) ("Chapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith."). *See also* Henrichsen v. Scovis (*In re* Scovis), 231 B.R. 336, 340 (B.A.P. 9th Cir. 1999); Barcal v. Laughlin (*In re* Barcal), 213 B.R. 1008, 1015 (B.A.P. 8th Cir. 1997); *In re* Tabor, 232 B.R. 85, 89 (Bankr. N.D. Ohio 1999); *In re* Berenato, 226 B.R. 819 (Bankr. E.D. Pa. 1998); *In Re* Griggs, 181 B.R. 111, 114 (Bankr. N.D. Ala. 1994) (noting the court should consider the debtor's chapter 13 schedules in determining eligibility for conversion from chapter 7 to chapter 13); People's Bank v. Winder (*In re* Winder), 171 B.R. 728, 730-31 (Bankr. D.Conn. 1994); *In re* White, 148 B.R. 283, 285 (Bankr. N.D. Ohio 1992); *In re* Koehler, 62 B.R. 70, 72 (Bankr. D. Neb. 1986).

[36]Section 1325(a)(3) establishes that one of the requirements for confirmation of the plan is that "the plan has been proposed in good faith." *See In re* Lindsey, 183 B.R. 624, 628 (Bankr. D. Idaho 1995) (noting that the accuracy of the debtor's schedules is one factor to consider in judging the debtor's good faith in proposing the plan). *See also* New Jersey Lawyers' Fund For Client Protection v. Goddard (*In re* Goddard), 212 B.R. 233 (D.N.J. 1997); *In re* Allard, 196 B.R. 402 (Bankr. N.D. Ill. 1996), *aff'd*, 202 B.R. 938 (N.D. Ill. 1996); *In re* Cockings, 172 B.R. 257 (Bankr. E.D. Ark. 1994); *In re* Hagel, 171 B.R. 686, 688 n.3 (Bankr. D. Mont. 1994), *aff'd*, 184 B.R. 793 (B.A.P. 9th Cir. 1995); *In re* Sitarz, 150 B.R. 710 (Bankr. D. Minn. 1993); *In re* Lawson, 93 B.R. 979 (Bankr. N.D. Ill. 1988).

[37]11 U.S.C. § 1307(c) (1994). Molitor v. Eidson (*In re* Molitor), 76 F.3d 218, 220 (8th Cir. 1996); *In re* Buchanan, 225 B.R. 672, 673-74 (Bankr. D. Minn. 1998); *In re* Famisaran, 224 B.R. 886, 893 (Bankr. N.D. Ill. 1998); *In re* Nassar, 216 B.R. 606, 608 (Bankr. S.D. Tex. 1998); *In re* Blankstyn, 210 B.R. 164, 167 (Bankr. D. Ariz. 1997); *In re* Rosencranz, 193 B.R. 629, 636-37 (Bankr. D. Mass. 1996); *In re* Green, 141 B.R. 440, 442-43 (Bankr. M.D. Fla. 1992); *In re* Powers, 48 B.R. 120, 121 (Bankr. M.D. La. 1985).

[38]11 U.S.C. § 1325(a)(4) (1994). Heritage Fed. Credit Union v. Cox (*In re* Cox) 175 B.R. 266, 275 (Bankr. C.D. Ill. 1994). *See also In re* Short, 176 B.R. 886, 888 (Bankr. S.D. Ind. 1995); *In re* Santa Maria, 128 B.R. 32, 36 (Bankr. N.D.N.Y. 1991); GFC Corp. of Missouri v. Bixby (*In re* Bixby), 10 B.R. 456, 458-59 (Bankr. D. Kan. 1981); *In re* Fredrickson, 5 B.R. 199, 200-201 (Bankr. M.D. Fla. 1980).

Section 1325(a)(4) provides for confirmation of the plan if:

> [T]he value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount

mation requirement to propose the debtor's best effort.[39]

The disclosure obligations of consumer debtors are at the very core of the bankruptcy process[40] and meeting these obligations is part of the price debtors pay for receiving the bankruptcy discharge.[41] This study seeks to measure the responses of consumer debtors to their disclosure obligations and thus the extent to which debtors keep their end of the "bankruptcy bargain."[42]

III. THE METHODOLOGY OF THE STUDY

A. Selecting Random Study Cases

The first task was to select consumer bankruptcy cases at random from the cases filed during the first half of 1998 in the Eastern District of Michigan, Southern Division at Detroit. The criterion to identify consumer cases was the debtor's statement on the petition that the debts are primarily consumer in nature, although the study establishes that this statement is not always accurate.[43]

Initially, it was thought that a study sample of 100 cases would be sufficient, and the first group of that number, Group 1, was selected. After a preliminary analysis of Group 1, it was concluded that a second group of 100 cases, Group 2, should also be selected, to provide a larger sample and to attempt to assure some greater reliability of the final results.

The two groups of cases were chosen in different ways. The cases in Group 1 were chosen from cases filed on three dates. For each date, the cases that were chosen were consecutive filings. No particular method was used to

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that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.

[39]11 U.S.C. § 1325(b)(1)(B) (1994). *In re* Pickering, 195 B.R. 759, 763-64 (Bankr. D. Mont. 1996); *In re* McCray, 172 B.R. 154, 156-57 (Bankr. S.D. Ga. 1994). *See also In re* Fields, 190 B.R. 16, 18 n.1 (Bankr. D.N.H. 1995); *In re* Hutcherson, 186 B.R. 546, 551 (Bankr. N.D. Ga. 1995).

Section 1325(b)(1)(B) provides for confirmation if "the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan." Section 1325(b)(2) states, "For purposes of this subsection, 'disposable income' means income which is received by the debtor and which is not reasonably necessary to be expended . . . for the maintenance or support of the debtor or a dependent of the debtor."

[40]*See supra* notes 16-18 and accompanying text.

[41]In chapter 7 cases, § 727(b) discharges the debtor from all prepetition debts except those set forth in § 523(a). In chapter 13 cases, § 1328(a) discharges the debtor from all prepetition debts except those set forth in that subsection. Section 524 imposes an injunction upon the collection of any discharged debt.

[42]Fidelity Nat'l Title Ins. Co. v. Franklin (*In re* Franklin), 179 B.R. 913, 927 (Bankr. E.D. Cal. 1995) (holding that the debtor "elected not to perform his end of the 'bankruptcy bargain' by fully, candidly, and completely disclosing all his financial affairs and debts").

[43]*See infra* notes 87-89 and accompanying text.

select the dates or the set of consecutive cases on each date. Table 1 shows the number of cases chosen on each date for the Group 1 cases.

TABLE 1. THE GROUP 1 CASES

Filing Date	Number of Cases
April 14, 1998	15
April 16, 1998	68
April 17, 1998	17
Total	100

The cases in Group 2 were chosen using a formula based upon a computer random number generator to return a random series of actual case filing numbers during the six-month study period.

B. Recording the Data from the Study Cases

For each of the 200 study cases, a copy of the petition, the schedules, the statement of financial affairs, the statement of intention and the attorney's fee statement under Rule 2016(b) was obtained. Thirty-nine items of data from each case were then reviewed and manually entered into a computer database program.[44] These data and their sources are listed below. A question mark indicates that information was recorded yes or no; otherwise, the actual data were recorded.

In addition, it was noted whether the debtor's residence appeared to be a home that the debtor owned, a mobile home or a rental.[45] Also, other incidental findings regarding problems with the papers were recorded.

Petition:
- Case number
- Joint filing?
- Chapter
- Stated consumer case but actually business?
- Stated asset/no asset
- Attorney
- Date petition filed

Summary of Schedules:
- Total assets
- Total liabilities
- Income
- Expenses
- Date schedules filed

Schedules A & B:
- HWJC disclosed?

[44]The database program is Microsoft Access 97. The author is willing to share the database for any legitimate research purposes, or to verify the results of this study.

[45]The residence was recorded as "home" if the debtor disclosed a home on schedule A and the address of that home matched the debtor's residence address on the petition. The residence was recorded as "mobile home" if the debtor disclosed a mobile home in schedule A or B and nothing suggested any other residence. The residence was recorded "rental" in all other cases.

Schedule B:
- Cash on hand
- Security deposit disclosed?
- Life insurance disclosed?
- Pension interest disclosed?

Schedule D:
- Secured creditors?

Schedules D, E & F:
- HWJC disclosed?

Schedule G:
- Lease disclosed?

Schedule I:
- Marital status
- Union dues?
- Pension income?
- Pension plan contribution?

Schedule J:
- Rent or mortgage payment
- Life insurance expense?
- Auto expense but no auto disclosed in Schedule B or G?
- Includes all debt to be reaffirmed per Statement of Intent?

Schedules I & J:
- Debtor in business?
- Detailed statement attached?

Verification:
- Date signed

Statement of Financial Affairs:
- Question 3a answered other than "none"?
- Answer to question 9 regarding fees paid

Statement of Intent:
- All secured creditors disclosed?
- Any debt to be reaffirmed?

2016(b) Statement:
- Total fee
- Fee paid
- Other fee disclosure problems

C. Examining the Sample Cases

The next task was to determine whether the sample of 200 cases is reasonably representative of the universe of consumer cases filed in the Eastern District of Michigan, Southern Division at Detroit during the study period, based on available data. The bankruptcy clerk provided demographic data pertaining to this universe of cases from the court's official BANCAP computer data base. The available demographic data consisted of (1) the proportion of consumer cases filed under chapter 7 and chapter 13, and (2) the proportion of cases filed as individual cases and as joint cases.

Table 2 demonstrates that the demographics of the sample cases in Groups 1 and 2, and the combined sample, are similar to the demographics of the universe of cases.

TABLE 2. THE DEMOGRAPHICS OF THE STUDY SAMPLE CASES COMPARED TO THE UNIVERSE OF CONSUMER CASES DURING THE STUDY PERIOD

	Study Sample			Universe of Cases
	Group 1	Group 2	Total	
Chapter 7	80%	72%	76%	74%
Chapter 13	20%	28%	24%	26%
Individual	78%	76%	77%	77%
Joint	22%	24%	23%	23%

IV. TESTING THE DISCLOSURES

To accomplish the goal of objectively measuring the care with which the initial papers in consumer bankruptcy cases are prepared, a series of tests were performed on the data recorded from papers in each case. These tests examine for specific instances of (a) incomplete disclosures, (b) inconsistent disclosures, and (c) disclosures that, although not themselves demonstrably inaccurate or incomplete, raise a substantial question about the care with which the other disclosures were made.

A. Incomplete Disclosures

Eleven areas were examined for incomplete disclosures. Each of these questions tests whether the debtor made a disclosure that was required either (1) by the Official Forms in every case, or (2) in the debtor's case based on other information that the debtor did disclose.

> 1. Does the petition state the required estimate of whether funds will be available for distribution to unsecured creditors?

The petition requires the debtor to estimate whether the case is an "asset" case or a "no-asset" case by checking the appropriate box to indicate either that "funds will be available for distribution to unsecured creditors," or that "after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors."[46] In each study case, the debtor's response or failure to respond was recorded.[47]

> *4% of debtors failed to indicate on the petition whether the case was asset or no asset. (8 of 200 cases)*

> 2. If the debtor is married, do schedules A & B disclose

[46]Official Bankruptcy Form 1.

[47]The accuracy of this response is tested in question 16, *infra*, at 673.

whether the property is owned by the husband, wife or both?

The instructions at the top of schedules A and B state, "If the debtor is married, state whether husband, wife, or both own property by placing an 'H', 'W', 'J' or 'C' in the column labeled 'Husband, Wife, Joint, or Community.'"[48] This question tests whether married debtors made these required disclosures regarding property ownership. The debtor's marital status was recorded from schedule I. In 90 cases, the debtor was married.

54% of married debtors did not state whether the property listed in schedules A and B was owned by the husband, the wife, jointly, or as community property. (49 of 90 cases)

3. If the debtor pays rent for a residence or a mobile home lot, does schedule B disclose a security deposit?

Line 3 of schedule B requires the debtor to disclose, "Security deposits with public utilities, telephone companies, landlords, and others."[49] It was inferred that a debtor was in a residential rental arrangement if (1) the debtor did not disclose owning either real property on schedule A or a mobile home on schedules A or B, and (2) the debtor disclosed an amount on the first line of schedule J for "Rent or home mortgage payment (include lot rented for mobile home)."[50] By these criteria, one hundred seven debtors paid rent for a residence.[51] Similarly, it was inferred that a debtor was in a mobile home lot rental arrangement if (1) schedule A or B disclosed a mobile home, (2) schedule A did not disclose real property, and (3) the first line on schedule J disclosed rent. By these criteria, fifteen debtors paid rent for a mobile home lot.[52] This test assumes that a security deposit is a part of any arrangement under which the debtor pays rent for a residence or a mobile home lot.[53]

81% of debtors paying rent disclosed no security deposit. (99 of 122 cases) This is divided as follows:

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[48]Official Bankruptcy Form 6, schedules A and B.

[49]*Id.*, schedule B.

[50]Similar criteria were utilized in Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors*, 7 AM. BANKR. INST. L. REV. 27, 50 (1998).

[51]Official Bankruptcy Form 6, schedule J. One hundred twenty debtors in the study sample disclosed no real property or a mobile home. Of these, thirteen disclosed no rent and were probably living rent-free with relatives or associates. Thus, 107 debtors paid rent for a residence.

[52]Sixteen debtors disclosed mobile homes and no real property. One of these disclosed no rent. Thus, fifteen debtors owned mobile homes and paid lot rent.

[53]This assumption is untested in this study. It is recognized that in some cases, a debtor's landlord might not require a security deposit. Nevertheless, it is appropriate and illuminating to examine how often debtors who were paying rent for a residence or a mobile home lot did not disclose a security deposit.

81% of debtors paying rent on a residence disclosed no security deposit. (87 of 107 cases)
80% of debtors paying rent on a mobile home lot disclosed no security deposit. (12 of 15 cases)

4. If schedule J discloses expenses for life insurance, is life insurance disclosed in schedule B?

Line 9 of schedule B requires the debtor to disclose, "Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each."[54] A debtor who discloses an expense for life insurance on schedule J should disclose an interest in that insurance on schedule B.[55] In 37 cases, the debtor disclosed an expense for life insurance.

73% of debtors who disclosed an expense for life insurance disclosed no life insurance. (27 of 37 cases)

5. If schedule I shows income from a pension, or if schedule J shows contributions to a pension, or if schedule I or J shows an expense for union dues, does schedule B show an interest in a pension?

Line 11 of schedule B requires the debtor to disclose and itemize, "Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans."[56] This question tests whether the debtor disclosed a pension interest when it appeared that the debtor would have such an interest. Certainly a debtor must disclose a pension interest if the debtor discloses pension income in schedule I or pension contribution expenses on schedule I or J. In addition, this question assumes that a debtor who is a union member has an interest in a pension

[54]Official Bankruptcy Form 6, schedule B, line 9. Although nothing in this instruction limits the disclosure requirement to life insurance, no debtors disclosed any other kind of insurance. *See* Payne v. Wood, 775 F.2d 202, 207 n.6 (7th Cir. 1985) ("The cash surrender value of the [property damage] policy was an asset of the estate. In order to keep the policy, the [debtors] should have charged the surrender value against their maximum exclusion.").

[55]It is possible that a debtor might pay for life insurance without having any interest in it. For example, a debtor might pay the premiums for a life insurance policy for a parent, spouse or child, without having any interest in the policy or its proceeds. However, this scenario seems rare and the inquiry was deemed appropriate for study purposes. In such a case, the debtor should, depending on the circumstances, disclose the payments on the statement of financial affairs as either payments to a creditor (question 3), gifts (question 7), or transfers (question 10). No such responses were made in the study sample.

[56]Official Bankruptcy Form 6, schedule B, line 11. Several courts have stated that a debtor must disclose a pension interest even if that interest would be either exempt under § 522(d) or excluded from the estate under § 541(c)(2) and *Patterson v. Shumate*, 504 U.S. 753, 112 S. Ct. 2242, 119 L. Ed. 2d 519 (1992). *See, e.g., In re* Turpen, 218 B.R. 908, 914 (Bankr. N.D. Iowa 1998); *In re* Comp, 134 B.R. 544, 553 (Bankr. M.D. Pa. 1991); *In re* Maide, 103 B.R. 696, 698 (Bankr. W.D. Pa. 1989).

But see Vaughn v. Aboukhater (*In re* Aboukhater), 165 B.R. 904, 910 (B.A.P. 9th Cir. 1994) ("Non-estate property need not be disclosed in the debtor's schedules."); Duval v. Portner (*In re* Portner), 109 B.R. 977, 986 (Bankr. D. Colo. 1989) (holding that the debtor's discharge cannot be denied for failing to disclose property that is not property of the estate.).

plan that must also be disclosed.[57] The debtor's union membership was determined through the disclosure of union dues as a payroll deduction on schedule I or as an expense on schedule J. In 50 cases, the debtor disclosed pension income, pension expense or union dues.

> *54% of debtors who disclosed pension income, pension expense or union dues disclosed no pension interest. (27 of 50 cases)*

6. If the petition is a joint petition, do schedules D, E and F disclose whether the debts are owed by the husband, wife, jointly or as community debts?

The instructions at the top of schedules D, E and F each state, "If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an 'H,' 'W,' 'J,' or 'C' in the column labeled 'Husband, Wife, Joint, or Community.'"[58] This question tests whether joint debtors made the required disclosures regarding liability on debts. In 49 cases, a joint petition was filed.

> *16% of debtors who filed joint petitions did not state whether the debts were owed by the husband, the wife, joint, or community. (8 of 49 cases)*

7. If the debtor rents either a residence or a mobile home lot, is the lease disclosed in schedule G?

The instructions for schedule G require the debtor to disclose "all executory contracts of any nature and all unexpired leases of real or personal property."[59] This question tests whether the debtor disclosed an expense for rent for a residence or a mobile home lot in schedule J and did not disclose the lease in schedule G.[60] One hundred seven debtors rented a residence and paid rent.[61] Fifteen debtors owned a mobile home and paid lot rent.[62]

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[57]In the Detroit area, most union members belong to national unions associated with the auto industry or to other major national unions. In the author's experience, members of such unions do have pension interests. However, if a debtor is employed only part-time or if the debtor's union is a small unaffiliated local union, the debtor may not have a pension interest. In any event, although the assumption is untested, it is worthwhile to examine the issue for purposes of this study.

[58]Official Bankruptcy Form 6, schedules D, E, and F.

[59]*Id.*, schedule G. This question assumes that schedule G requires the disclosure of both written and oral leases. However, it might be concluded that schedule G is ambiguous on this point. *See infra* note 180 and accompanying text. Nevertheless, in light of the functional purposes of schedule G, the assumption is warranted in this study.

[60]The criteria for determining whether the debtor rented a residence are set forth in the discussion on question 3, *supra*, at 665. *See also supra* note 45.

[61]*See supra* note 51.

[62]The criteria for determining whether the debtor rented a mobile home lot are set forth in the discussion on question 3, *supra*, at 665. *See also supra* note 52.

85% of renting debtors did not disclose a lease. (104 of 122 cases) These are divided as follows:
88% of debtors paying rent for a residence did not disclose a lease. (94 of 107 cases)
67% of debtors paying mobile home lot rent did not disclose a lot lease. (10 of 15 cases)

8. If the debtor is in business, did the debtor attach a detailed statement of income and expenses to schedules I and J?

The line on schedule I that requires the debtor to disclose "Regular income from operation of business or profession or farm" and instructs the debtor to "attach detailed statement."[63] Schedule J imposes a similar requirement for business expenses.[64] Thus, a debtor with business income or expenses is required to attach detailed statements of income and expenses. This was determined by examining the specific disclosure on the business income line on schedule I and the business expense line on schedule J, as well as other similar disclosures, for example, on the "other monthly income" line on schedule I.[65] Twelve debtors had such business income or expenses.[66]

83% of debtors with business income or expenses failed to attach the required detailed statements of income and expenses.[67] *(10 of 12 cases)*

9. In a chapter 7 case, does schedule J address payments for all debts that the debtor intends to reaffirm?

Section 521(2)(A) requires the debtor to file a statement of intent regarding secured consumer debts.[68] When a debtor states an intention to reaffirm a secured debt, schedule J requires the debtor to disclose the resulting monthly payment.[69] A notation was made in each case in which monthly

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[63]Official Bankruptcy Form 6, schedule I.

[64]*Id.*, schedule J.

[65]*Id.*, schedule I.

[66]Only two of the twelve debtors with business income or expenses had debts that appeared to be primarily business debts. *See infra* question 17 at 674 and note 89. The other ten debtors with business income or expenses appeared to have primarily consumer debt. However, it can sometimes be difficult to determine from the schedules whether credit card debt or other bank debt is consumer debt or business debt. *See, e.g., In re* Goodson, 130 B.R. 897, 900 (Bankr. N.D. Okla. 1991); *In re* Berndt, 127 B.R. 222, 224 (Bankr. D.N.D. 1991); *In re* Hammer, 124 B.R. 287, 290 (Bankr. C.D. Ill. 1991), *vacated on other grounds, sub nom.*, Meeker v. Pilgrim (*In re* Pilgrim), 135 B.R. 314 (C.D. Ill. 1992); *In re* Bell, 65 B.R. 575 (E.D. Mich. 1986); *In re* Almendinger, 56 B.R. 97 (Bankr. N.D. Ohio 1985).

[67]Of the two debtors who did attach statements of income and expenses, one attached a form that appeared to be a preprinted, commercially available form and the other attached schedule C from a Form 1040 federal tax return.

[68]11 U.S.C. § 521(2)(A) (1994). Official Bankruptcy Form 8.

[69]Schedule J has a line for the disclosure of "Installment payments." Official Bankruptcy Form 6. *See In re* Hovestadt, 193 B.R. 382, 385 (Bankr. D. Mass. 1996) ("This Court has observed that in the

payments on debts to be reaffirmed are not included in schedule J. In seventy-seven chapter 7 cases, the debtor's statement of intention stated an intent to reaffirm debt.

21% of chapter 7 debtors who stated an intent to reaffirm secured consumer debt did not include in schedule J the monthly payments for all of the debts to be reaffirmed. (16 of 77 cases)

10. Are the declarations concerning the debtor's schedules and statement of financial affairs dated?

Official Bankruptcy Form 6 includes a signed declaration concerning debtor's schedules, and to the left of the debtor's signature line, there is a blank for a date.[70] Similarly, Official Bankruptcy Form 7 includes a signed declaration concerning the statement of financial affairs, with a blank line for a date to the left of the debtor's signature line.[71] This question tests whether the debtor filled in a date on the declaration for either the schedules and the statement of financial affairs.[72]

10.5% of debtors failed to date the schedules and the statement of financial affairs. (21 of 200 cases)

11. In a chapter 7 case, does the statement of intention under § 521(2)(A) address all secured creditors?

A debtor must list all secured creditors in schedule D. Further, § 521(2)(A) requires a chapter 7 debtor to disclose whether the debtor intends to reaffirm each secured consumer debt or to redeem the collateral. Official Bankruptcy Form 8 requires the debtor to state an intention either to surrender the collateral or to avoid the lien under § 522(f). This question tests whether the debtor's statement of intent addresses all secured creditors holding consumer debt. Ninety-one chapter 7 debtors disclosed secured consumer debt in schedule D.

14% of chapter 7 debtors with secured consumer debt did

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majority of cases in which reaffirmation agreements are filed pursuant to section 524(c) the debtors' Schedules I and J reveal that debtors do not have sufficient income to afford even the de minimis payments set forth in the reaffirmation agreements filed with the Court." (footnote omitted)); *In re* Bruzzese, 214 B.R. 444, 450 (Bankr. E.D.N.Y. 1997) ("[A] sampling of the debtors' schedules I and J in the 30 cases raised a prima facie concern whether the debtors could meet their repayment obligations under these agreements."). *See also In re* Melendez, 224 B.R. 252, 259 (Bankr. D. Mass. 1998); *In re* Kamps, 217 B.R. 836, 846 (Bankr. C.D. Cal. 1998); *In re* Latanowich, 207 B.R. 326, 335 (Bankr. D. Mass. 1997) ("[T]he Debtor's schedule of income and expenses showed no excess income with which to pay the debt he was reaffirming.").

[70] *See also supra* note 8, and *infra* questions 18 and 19, at 675-76.

[71] *Id.*

[72] If either the schedules or the statement of financial affairs were dated, this was considered sufficient for purposes of this study, although perhaps not as a matter of fully completing the papers.

not address all of their secured debt in their statements of intention.[73] *(13 of 91 cases)*

B. INCONSISTENT DISCLOSURES

Six areas were examined for inconsistent disclosures:

12. Does schedule J show an expense for an automobile payment but schedules B and G disclose no automobile?

Generally, a debtor disclosing an expense for automobile payments in schedule J will have an interest in the automobile that must be disclosed.[74] If the debtor owns the automobile, the disclosure would be on schedule B. If the debtor leases the automobile, the disclosure would be on schedule G. This question tests whether the debtor inconsistently disclosed an expense for automobile payments but no interest in any automobile.

5% of debtors inconsistently disclosed expenses for automobile payments but no automobile. (10 of 200 cases)

13. In a chapter 7 case, are the expenses in schedule J within 10% of the income in schedule I?

In many cases, the debtor has established a pattern of increasing borrowing to carry on a lifestyle beyond the debtor's means, which has caused the debtor's bankruptcy. It is entirely reasonable to expect that as part of the bankruptcy process, the debtor will come to understand and appreciate the basic economic fact that one's income provides a natural limit on one's expenses. Without assets or credit, one's expenses simply cannot exceed one's income. This fact applies with special urgency to a debtor in bankruptcy because as the bankruptcy approaches, during the bankruptcy, and for a time after the bankruptcy, the debtor's assets and credit are likely to be limited. If the debtor's expenses still substantially exceed the debtor's income, the debtor has a problem, or soon will. Indeed it might be questioned whether such a debtor yet understands and appreciates the basic economic principles of budgeting income and expenses. This question tests the debtor's understanding and appreciation of this fact of life as of the moment of filing bankruptcy.[75]

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[73]This includes one chapter 7 case in the study sample in which the required statement of intent was not filed.

[74]There is an infrequent scenario in which a debtor makes payments on a vehicle that is formally titled or leased in another's name, such a child. In that event, a response might not be required on either schedule B or G, depending on the circumstances. However, in such a case, the debtor should, again depending on the circumstances, disclose the payments on the statement of financial affairs. *See supra* note 55. No such responses were made in the study sample.

[75]"One of the most difficult problems faced by every bankruptcy attorney is helping the debtors to prepare a realistic, post-bankruptcy budget, but this is probably the most important thing [the attorney] will do to help them. Their financial and emotional rehabilitation starts with this." Hon. John C. Akard,

On the other hand, if a chapter 7 debtor's income substantially exceeds the debtor's expenses, so that there is net disposable income under 11 U.S.C. § 1325(b), there may be a question of whether the case is a "substantial abuse" under 11 U.S.C. § 707(b).[76]

Accordingly, this question tests whether a chapter 7 debtor's disclosures regarding income and expenses are consistent. Somewhat arbitrarily, a 10% leeway was structured into the test. This leeway was chosen because schedules I and J require the disclosure of any anticipated changes in income and expenses of more than 10% within one year.

> *43% of chapter 7 debtors disclosed expenses not within 10% of income.*[77] *(66 of 152 cases) These debtors are further described as follows:*
>
> *6% of chapter 7 debtors showed no income. (9 cases)*
>
> *35% of chapter 7 debtors showed expenses more than 10% above income. (53 cases)*
>
> *3% of chapter 7 debtors showed expenses more than 10% below income. (4 cases)*

14. Is the debtor's disclosure of the attorney fee paid in response to question 9 of the statement of financial affairs consistent with the attorney's disclosure of attorney fee paid in the Rule 2016(b) statement?

Question 9 of the statement of financial affairs requires *the debtor* to disclose all attorney fees paid within one year before filing for "consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy . . ."[78] Rule 2016(b) requires the *debtor's attorney* to disclose the information required by 11 U.S.C. § 329(a), which includes the compensation paid within one year of the filing for "services rendered or to be rendered in contemplation of or in connection with the case . . ."[79] This

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The Human Side of Bankruptcy, 18-FEB AM. BANKR. INST. J. 28, 28 (1999). "The budgeting process is as important in a chapter 7 case as it is in a chapter 13. The chapter 7 should be a solution to the debtor's problems, not just temporary relief. Chapter 7 debtors must make some hard choices about what items they can really afford and must examine their lifestyle carefully. Their attorney must guide them toward a realistic budget so they can move forward in their lives without financial pressures." *Id.* at 29 n.3.

[76]*See infra* notes 116-20. *See also* Jean Braucher, *Counseling Consumer Debtors to Make Their Own Informed Choices - A Question of Professional Responsibility*, 5 AM. BANKR. INST. L. REV. 165, 181 (1997) ("A debtor who chooses chapter 7 should not file schedules that show disposable income that would not be there if expenses had been listed accurately. Listing expenses realistically minimizes the risk of a substantial abuse challenge in a chapter 7 case.")

[77]None of these debtors provided an explanation regarding anticipated changes in income or expenses.

[78]Official Bankruptcy Form 7, question 9.

[79]FED. R. BANKR. P. 2016(b); 11 U.S.C. § 329(a) (1994).

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question tests whether these disclosures are consistent.[80]

In 12.5% of cases, the debtor's disclosure about the fee paid was not consistent with the attorney's disclosure. (25 of 200 cases)

15. Are there other problems with the fee disclosures?

Other problems with the debtor's disclosure in response to question 9 of the statement of financial affairs and with the attorney's disclosure in the Rule 2016(b) statement were noted and catalogued as they were found.

10% of cases had other fee disclosure problems. (20 of 200) These are further described as follows:

Seven attorney statements indicated that the source of the fee was "wages," but the debtor disclosed no wages in schedule J.

Five attorney statements indicated that the balance due from the debtor was a negative amount. In four of these cases, the attorney stated that the debtor had paid $495; that the debtor had agreed to pay $0; and that the balance due was "-$495." In the other case the stated balance due was "-$650."[81]

Two attorney statements regarding the attorney fees were inconsistent with the statements of the attorney fees in the chapter 13 plans.

Six cases had other similar problems.[82]

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[80]Literally taken, these requirements are slightly different, in that the debtor may have to disclose payments for debt consolidation services that the attorney might not have to disclose. Nevertheless, experience indicates that it is rare for the debtor's attorney to provide such debt consolidation services apart from the services provided in preparation for the bankruptcy. Most often, the consumer debtor goes to a bankruptcy attorney for legal services in filing a bankruptcy. In that event, the disclosures should be identical.

[81]These five cases were filed by the same attorney.

[82]The following problems were found, once each in different cases:

(1) The debtor's attorney did not file a Rule 2016(b) statement.
(2) The Rule 2016(b) statement disclosed a fee paid that was greater than fee agreed.
(3) The debtor's response to question 9 stated that the attorney fee was paid on a date after the petition was filed, but the attorney's Rule 2016(b) statement stated that the fee was paid before the petition was filed.
(4) The debtor's response to question 9 disclosed that the debtor paid Attorney A, but the Rule 2016(b) statement disclosed that the debtor paid Attorney B.
(5) The debtor's response to question 9 did not state amount of fee paid.
(6) The Rule 2016(b) statement indicated that the source of fee was "N/A".

In addition, the study revealed that in 46% of the chapter 7 cases, a balance on the attorney fees remained due when the bankruptcy was filed. (70 of 152 cases) Although the fee balance may constitute

16. Is the estimation of whether assets will be available for distribution to creditors consistent with the disclosures in the schedules or in the chapter 13 plan?

In chapter 7 cases, the statement regarding the estimated availability of funds for distribution to unsecured creditors was compared with the schedules.[83] If the debtor exempted all unencumbered property on schedule C, and if the debtor disclosed no preferences or fraudulent conveyances, the debtor should have estimated that no funds would be available for distribution. In chapter 13 cases, the debtor's estimate was evaluated according to whether the debtor's plan proposed a distribution to unsecured creditors.[84]

25.5% of debtors incorrectly estimated whether funds would be available for distribution to creditors. (51 of 200 cases) By chapter, the results are:

11% of chapter 7 debtors estimated that funds would be available for distribution to creditors

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a prepetiton debt, this debt was not listed in schedule F in any of the cases. "The practice of not scheduling debts for prepetition fees may mislead debtors as to the dischargeability of these debts." Marianne B. Culhane & Michaela M. White, *Reaffirmation and Discharge Problems*, 1114 PLI/Corp 703, 721-22 (April-May, 1999) (reporting empirical study results showing 38% of consumer debtors' attorneys extended fee credit and that none listed the debt in schedules D or F, although a few disclosed the representation agreement on schedule G).

Granting fee credit raises the issue of whether the postpetition collection of these fees by the debtor's attorney violates the automatic stay of § 362(a) or the discharge injunction of § 524(a). On this issue one court of appeals recently stated:

> This small-dollars but large-issue litigation poses a problem that pervades each of the many thousands of no-asset or low-asset personal bankruptcies in the federal court system: the legal posture of the attorneys' fees paid or payable by Chapter 7 debtors. Whether the debtor is required by his or her attorney to pay all of the fees up front—even before the filing in bankruptcy—or, as here, enters into a prefiling arrangement for payment of the fees (or a material portion of the fees) after filing, the legal status of the fees attributable to postpetition services does not fit comfortably within the provisions of the Bankruptcy Code.

Gordon v. Hines (*In re* Hines), 147 F.3d 1185, 1186 (9th Cir. 1998). This issue has not been addressed in the Eastern District of Michigan.

[83]In the discussion of question 1, *supra* at 664, the language on the petition form establishing this requirement is quoted.

[84]Although in chapter 7 cases the proper criteria is fairly obvious, in chapter 13 cases, attorneys appeared to use two different criteria. In estimating whether there will be a distribution to unsecured creditors, many chapter 13 attorneys applied a hypothetical chapter 7 liquidation analysis, while others relied on the chapter 13 plan.

The Administrative Office of the United States Courts, which collects this data for statistical purposes, states that the proper test is whether the chapter 13 plan proposes a distribution to unsecured creditors. Telephone Interviews with Frank Szczebak, Director of the Bankruptcy Division, and Patricia Channon, Administrative Office United States Courts (August 13, 1999). Accordingly, that was the test utilized in this study.

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when the schedules suggested otherwise.[85] *(17 of 152 cases)*

71% of chapter 13 debtors improperly estimated that no funds would be distributed to creditors.[86] *(34 of 48 cases)*

17. Is the statement that the debts are primarily consumer debts consistent with schedules D, E and F?

The petition requires the debtor to state, by checking the appropriate box, whether the "nature of debt" is "non-business/consumer" or "business."[87] As noted, pursuant to the selection criterion for this study, all 200 debtors stated that the nature of the debt was consumer debt.[88] This question compares that statement with the information regarding the debts disclosed in schedules D, E and F.

2% of debtors who indicated primarily consumer debt should have indicated primarily business debt.[89] *(4 of 200 cases)*

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[85]Indeed, the schedules in all 152 chapter 7 cases suggested that all of them should have been estimated to be no asset cases.

[86]In fact, the plans in all forty-eight chapter 13 cases provided for distribution of funds to unsecured creditors.

[87]Official Bankruptcy Form 1. The term "consumer debt" is defined in 11 U.S.C. § 101(8) as "debt incurred by an individual primarily for a personal, family, or household purpose." No further official instructions are provided for this disclosure. Some cases addressing the difficulties that can arise in distinguishing between consumer and business debt are cited *supra* note 66.

Inaccuracies in statement of whether the nature of the debt is business or consumer have been reported previously. Jennifer Conners Frasier, *Caught in a Cycle of Neglect: The Accuracy of Bankruptcy Statistics*, 101 COM. L.J. 307, 334 (Winter 1996) (reporting error rates of 7.5, 13 and 26% for business cases in chapter 7, 11, and 13, respectively); Hon. Lisa Hill Fenning & Craig A. Hart, *Measuring Chapter 11: The Real World of 500 Cases*, 4 AM. BANKR. INST. L. REV. 119, 123 (1996) ("[T]he proportion of business chapter 11 cases is 7% higher than the number of business cases reported in the Administrative Office demographic data for our district. The understatement in the official statistics results primarily from a lack of adequate instructions to debtors on how to classify their cases.").

The Administrative Office of the United States Courts is aware that on this point, "the information provided by some debtors is inaccurate." COMMISSION REPORT, *supra* note 2, Appendix C-1, Report of the Bankruptcy Statistics Task Force of the Administrative Office of the United States Courts, § 5, at 10. The task force explained, "Many small-capitalized debtors derive most of their income from their own businesses, and their business and personal assets and debts are often intertwined and not easily distinguishable, particularly if they do not maintain sound records." *Id.* As a result, the task force recommended changing the form to ask about the filing of federal tax schedule C or K, incorporation or business licenses, as well as verification of this information by the trustee. *Id.*

[88]*See supra* note 43 and accompanying text.

[89]Because the selection criterion for the study was the debtor's statement that the nature of the debt was consumer debt, these four cases were not excluded, even though the debtor's statement was incorrect. Including these cases allowed the study to measure how often the statement regarding the nature of the debt was inaccurate. Further observations regarding these four cases are made *supra* note 66.

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C. DISCLOSURES THAT RAISE QUESTIONS

Three areas were examined, not because the responses are demonstrably inaccurate, but rather because they raise substantial questions about the care with which the papers were prepared:

> 18. Are the schedules dated more than fifteen days before the petition was filed?

Neither the Bankruptcy Rules nor the Official Forms establish any requirement or provide any instruction on when the debtor should date the schedules. The study tested whether the schedules and the statement of financial affairs were dated more than fifteen days before the case was filed. Although somewhat arbitrary, this criterion was selected because under Bankruptcy Rule 1007(c), the debtor has fifteen days after filing the petition to file the schedules and statement of financial affairs.[90]

Although the Official Bankruptcy Forms provide no instruction on this point, dating the disclosures on or near the filing date is important in administering the bankruptcy case because the financial information required in the forms naturally changes over time. Stale information is less likely to be accurate. Also, several of the required disclosures are explicitly time sensitive.[91] In any event, questions regarding the current accuracy of the disclosures arise when the papers are dated substantially before they are filed.

> *19% of debtors dated the papers more than fifteen days before the petition was filed.*[92] *(38 of 200 cases) Half of those debtors dated the papers more than thirty days before the petition was filed. (17 of 200 cases) The two longest time periods were 154 and 145 days.*

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[90]FED. R. BANKR. P. 1007(c).

[91]The disclosures that are explicitly time sensitive include the responses to the questions in the statement of financial affairs about: income from employment or operation of business for the previous two calendar years and calendar year to date (question 1); other income during the previous two years (question 2); payments to creditors within ninety days, and within one year for payments to insiders (question 3); suits and administrative proceedings, executions, garnishments and attachments within one year (question 4); repossessions, foreclosures and returns within one year (question 5); assignments within 120 days and receiverships within one year (question 6); gifts within one year (question 7); losses within one year (question 8); payments related to debt counseling or bankruptcy within one year (question 9); other transfers within one year (question 10); closed financial accounts within one year (question 11); safe deposit boxes within one year (question 12); setoffs within ninety days (question 13); and, prior address of debtor within two years (question 15).

[92]One explanation for this is that in these cases, the debtor's attorney completed the forms and held them for some reason, perhaps relating to the debtor's payment of the attorney fees and costs. Some evidence of this is reported in Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 549 (1993) (finding that interviews with chapter 7 lawyers disclosed that fifteen of thirty-three lawyers did not grant credit on their fees; however, some of these took fees in prefiling installments of two to six months, but the petition would not be filed prior to full payment). This study did not test these hypotheses.

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19. Were the schedules filed after the petition but dated before?

Another circumstance raising questions about the preparation of the schedules occurs when the schedules are dated before the petition is filed, but are then held for filing until after the petition is filed.[93] The explanation for this odd circumstance was not investigated further.

5.5% of debtors signed their papers before filing the petition but filed them after filing the petition. (11 of 200 cases)

20. Is there any substantive response to question 3a on the statement of financial affairs regarding payments aggregating more than $600 to any creditor within ninety days before the petition?

Question 3a on the statement of financial affairs requires disclosure of payments aggregating more than $600 to any creditor within 90 days before the filing.[94] In testing the responses to this question, the initial effort was to identify the subset of debtors who were most likely to have made a payment required to be disclosed. The criteria were (1) a monthly rent or mortgage payment on schedule J over $600, and (2) monthly income on schedule I over $2,000. Thus, a debtor in this subset who makes even one rent or mortgage payment within the ninety days before filing bankruptcy would be required to respond affirmatively to question 3a.[95] Twenty debtors had monthly incomes over $2000 and monthly rent or mortgage payments over $600. The lack of response to question 3a, especially by the higher income debtors in the study sample, raises questions about the care and understanding of debtors in completing these papers.

85% of the debtors with over $600 in monthly rent or mortgage payments and with over $2000 in monthly in-

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[93]Perhaps the debtor's attorneys in these cases held the signed papers until the fee balance was paid. *Id.*

[94]Official Bankruptcy Form 7, question 3a. The debtor's disclosure of such transfers facilitates prompt action by the trustee, the importance of which was explained by one court:

> Recovery of property pursuant to § 548 is intended to insure fairness to the creditors in the distribution of the assets of the bankrupt's estate. As a fiduciary of the estate, the trustee has a duty to avoid such transfers if to do so would benefit the estate and it is usually advisable for the trustee to act quickly. By waiting, the trustee is merely risking the loss of his ability to trace the property and the transferees.

Lovell v. Mixon, 719 F.2d 1373, 1378 (8th Cir. 1983). *See also supra* note 31 and cases cited therein.

[95]It appears that many attorneys perceive that question 3a on the statement of financial affairs is limited to payments to unsecured creditors. However, nothing in the language of the question justifies this conclusion. Thus, a debtor must also disclose payments to secured creditors and lessees.

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come disclosed nothing in response to question 3a on the statement of financial affairs. (17 of 20 cases)

21. Other errors

Other errors were incidentally found and recorded.

26.5% of the cases had other errors. These included:

Schedule A listed a mobile home.

Schedule B listed cash on hand in a "Brokerage Account."

Schedule C did not exempt a mobile home.[96]

Schedules D and F did not disclose a debt on a loan from a pension plan, the payments on which were disclosed in schedules I or J.

Schedule E included debts that are not priority debts.[97]

Schedule I did not disclose spouse employment information, or did not identify the spouse, or did not list payroll deductions for taxes, or stated that the marital status is "single" but disclosed spouse information.

Schedule J disclosed payments for property that the statement of intent indicated would be surrendered, or for property that was not disclosed as collateral in schedule D.

The statement of intent included creditors not listed in schedule D, or for creditors listed as unsecured creditors.

V. COMPILING THE RESULTS

A. For the Study Cases as a Whole

The results are disturbing by any measure. Six of the eleven specific inquiries into missing disclosures turned up problems in more than 50% of the cases in which the missing disclosures were required.[98] Ten of these eleven inquiries revealed problems in more than 10% of the cases in which disclo-

[96]Technically, this may not be a disclosure error, as a debtor could rationally choose not to exempt all exemptible property. In this case, however, it was an error, later corrected.

[97]Priority debts are set forth in 11 U.S.C. § 507(a). The debts erroneously scheduled as priority debts included debts for student loans and for unemployment overpayments. Apparently, these debtors were advised that any debt to a governmental unit is a priority debt. Also included here was a debt to "Best Buy," which was erroneously scheduled as a "consumer deposit" under § 507(a)(6).

[98]See the results on questions 2 (54%), 3 (81%), 4 (73%), 5 (54%), 7 (85%) and 8 (83%), *supra*, at ___.

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sures were required.[99] Three of the five specific inquiries into inconsistent disclosures revealed problems in more than 10% of the cases.[100] Two of the three specific inquiries designed to expose disclosures that raise substantial questions revealed problems in more than 10% of the cases.[101] Table 3 compiles these results.

TABLE 3. SUMMARY OF RESULTS BY TEST QUESTION

Question Number	Test Criteria	Percent with Problems
1	Not state asset or no asset	4.0%
2	Married debtor not state H, W, J or C for property	54.0%
3	Renting debtor not disclose security deposit	81.0%
4	Debtor with life insurance expense not disclose life insurance	73.0%
5	Debtor with likely pension interest not disclose pension interest	54.0%
6	Joint debtors not disclose H, W, J or C for debts	16.0%
7	Renting debtor not disclose lease	85.0%
8	Debtor in business not attach detailed statement	83.0%
9	Chapter 7 debtor not list expenses for all debts to be reaffirmed	21.0%
10	Not date papers	10.5%
11	Chapter 7 statement of intent not address all secured creditors	14.0%
12	Not disclose automobile	5.0%
13	Chapter 7 debtor with expenses not within 10% of income	43.0%
14	Attorney fee disclosures inconsistent	12.5%
15	Other fee disclosure problems	10.0%
16	Asset/no asset estimation incorrect	25.5%
17	Consumer debt statement incorrect	2.0%
18	Papers dated more than 15 days before filing	19.0%
19	Schedules dated before petition but filed after	5.5%
20	Not disclose prepetition debt payments	85.0%
21	Other errors	26.5%

A total of 687 errors and problems were found. These errors and problems were observed in 99% of the study cases. (198 of 200 cases) The median number is 3.0 per case. The mean (average) is 3.4 per case, with a standard deviation of 1.6.

Chart 1 shows the number of cases with each number of errors. This chart demonstrates that 26% of the cases had five or more errors and problems. (52 of 200 cases) Nearly 10% of the cases had six or more errors and problems. (19 of 200 cases)

[99]*See*, in addition to the results summarized in note 98, *supra*, the results on questions 6 (16%), 9 (21%), 10 (10.5%), and 11 (14%), *supra*. Only one inquiry in this category, question 1 (4%), *supra*, at 664, revealed problems in less than 10% of cases.

[100]*See* the results on questions 13 (43%), 14 (12.5%) and 16 (25.5%), *supra*, at 670.

[101]*See* the results on questions 18 (19%) and 20 (85%), *supra*, at 675-76.

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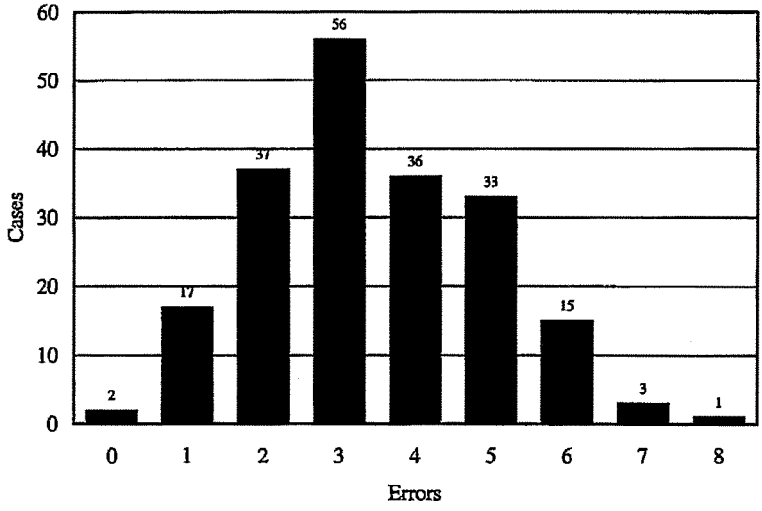
CHART 1. THE NUMBER OF CASES WITH EACH NUMBER OF ERRORS



B. COMPARISONS BASED ON DEBTOR CHARACTERISTICS

Subgroups of debtors were analyzed by certain identifiable characteristics. This was done in an attempt to determine whether remedial efforts should be more focused on any of the subgroups. However, none of the subgroups did significantly better or worse compared to the others.

When an adjustment is made to compare the results on the eighteen questions applicable in both chapter 7 and chapter 13, the average number of problems for the one hundred fifty-two chapter 7 cases is 2.93, and for the forty-eight chapter 13 cases, 3.04.[102] The average for the ninety-four single debtors was 3.17, for the fourteen separated debtors, 3.07, and for the ninety married debtors, 3.74.[103] For the one hundred fifty-four individual petitions, the average was 3.42, and for the forty-six joint petitions, 3.48.[104]

For both chapter 7 and chapter 13, the cases filed by the higher volume firms had slightly better averages. The thirty-six chapter 7 cases filed by the

[102]Three test questions (9, 11 and 13) applied only to chapter 7 cases. For this comparison, the results of these questions were removed. Accordingly, these averages compare the results on the same eighteen test questions.

[103]For this comparison, no adjustment was made for the results of the test question directed only to married debtors (question 2). These three subgroups total 198 debtors because 2 debtors did not state their marital status on schedule I.

[104]For this comparison, no adjustment was made for the results of the test question directed only to joint debtors (question 6).

nine firms that filed the most chapter 7 cases during the study period had an average of 3.31; the average of the other one hundred sixteen chapter 7 cases was 3.64.[105] The twenty-three chapter 13 cases filed by the nine firms that filed the most chapter 13 cases during the study period had an average of 2.74; the average of the other twenty-five chapter 13 cases was 3.32. Thus, this effect was somewhat greater in chapter 13, where the filings are more concentrated in the higher volume firms.[106]

These results suggest that the observed differences have no functional significance.

C. Correlations with the Fee and Financial Data in Each Case

1. *The Chapter 7 Fee*

The data permit an examination of the premise that the chapter 7 fee fixed in the marketplace is too low to permit debtors' attorneys sufficient time to prepare fully accurate and complete schedules and statements of financial affairs.[107] This premise was examined in Chart 2, a scatterplot in which each point represents a chapter 7 case with its associated fees and number of errors.[108] The nearly flat trendline on Chart 2 demonstrates that there is no significant relationship between the chapter 7 fee and the number of errors found in this study.[109]

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[105]These chapter 7 averages are not adjusted as set forth *supra* note 102.

[106]48% of the chapter 13 cases were filed by the higher volume firms. Just 24% of the chapter 7 cases were filed by the higher volume firms.

[107]No purpose is served in examining this issue in the chapter 13 cases in this study, because in the Eastern District of Michigan, Southern Division at Detroit, the fee in most such cases is $1200. In 81% of the chapter 13 cases in the study, the agreed fee was $1200 according to the attorney's Rule 2016(b) statement. (39 of 48 cases) In three chapter 13 cases, the fee was $0, probably because the attorney so agreed or because representation was provided by legal aid or a prepaid legal services program. In two chapter 13 cases, the fee was under $1200 ($950 and $1000), and in four cases it exceeded $1200 (one case at $1250 and three cases at $1500).

[108]The fees reflected on Chart 1 are taken from the attorneys' Rule 2016(b) statements, not from the debtors' responses to question 9 on the statement of financial affairs. As noted in the discussion on question 14, *supra* at 671-72, the study found differences in the disclosures in these papers in 12.5% of the cases. The disclosure made in the Rule 2016(b) statement was chosen because it presumably better reflects what the attorney thinks the fee is, and this data point is more relevant to the attorney's economic incentives.

However, Chart 1 does reflect one set of adjustments to the fee data from the Rule 2016(b) statements, in an attempt to better approximate reality. As noted in the discussion on question 15 (relating to other fee disclosure errors), *supra* at 672, five statements filed by one attorney indicated that the agreed fee was $0, even though the debtor had paid either $495 or $650. For purposes of correlating the agreed fee and the number of errors, the paid fee data in these five cases was used rather than the agreed fee data. This adjustment assumes that the fee paid by the debtor was the actual agreed fee. *See supra* note 81 and accompanying text.

[109]All of the scatterplots and their associated trendlines were created using the Microsoft Excel spreadsheet program.

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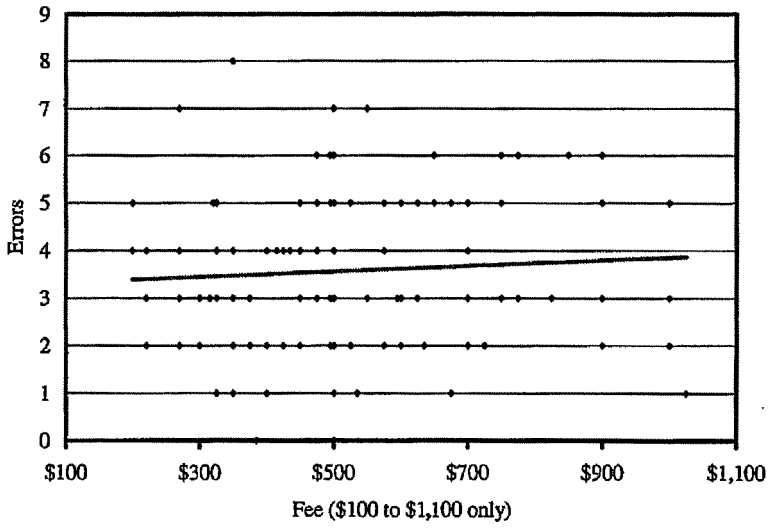
CHART 2. CHAPTER 7 FEE



2. *The Prepetition Fee Paid*

Whereas Chart 2 addresses the total attorney fee, Chart 3 addresses the actual fees paid before the petition was filed, for both chapter 7 and chapter 13 cases. Again, this is to test whether a higher "up front" fee permits the attorney the time necessary to file more complete and accurate papers.

However, Chart 3 appears to demonstrate somewhat the opposite. It shows that the number of errors actually increases slightly with the amount of the fee paid before the petition is filed. At the lower end, where the prepetition payment is up to $200, the errors approximate 3. At the other end, where the prepetition payment is over $800, the errors approximate 4. The explanation for this was not examined further.

In six chapter 7 cases, the fee was $0, for the probable reasons indicated in note 107, *supra*. These cases were excluded from Chart 2 because the economic incentives under scrutiny here do not seem to apply when considerations other than those arising from market forces dictate the attorney fee.

Further, for presentation purposes only, Chart 2 also excludes two chapter 7 cases in which the fees were $1375 and $1600. These fees substantially exceeded the upper end of the primary range of fees (approximately $200 - $1000). There were four errors in each of these two cases, which is approximately what the trendline on Chart 2 would have predicted.

The median fee in the chapter 7 cases (excluding the six no fee cases) was $500 (range $199 - $1600). The average was $520 with a standard deviation of $209.

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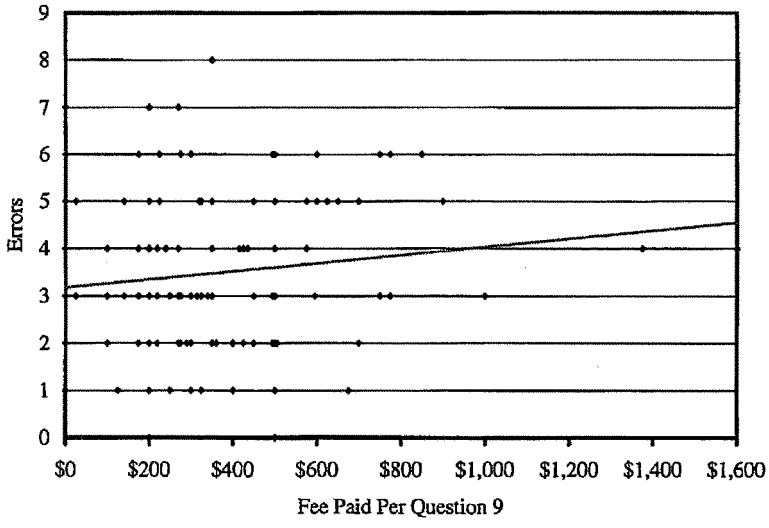
CHART 3. FEE PAID PREPETITION — CHAPTERS 7 AND 13



3. *The Income, Expenses, Assets and Liabilities*

An analysis was made of whether other available financial data in each case could be correlated with the number of problems and errors in each case. Charts 4 (Income), 6 (Assets) and 7 (Liabilities) showed no significant correlations. Chart 5 (Expenses) shows a slight direct correlation between expenses and errors, but the basis for this was not further examined. In any event, the correlation does not appear to have much functional significance.

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CHART 4. INCOME

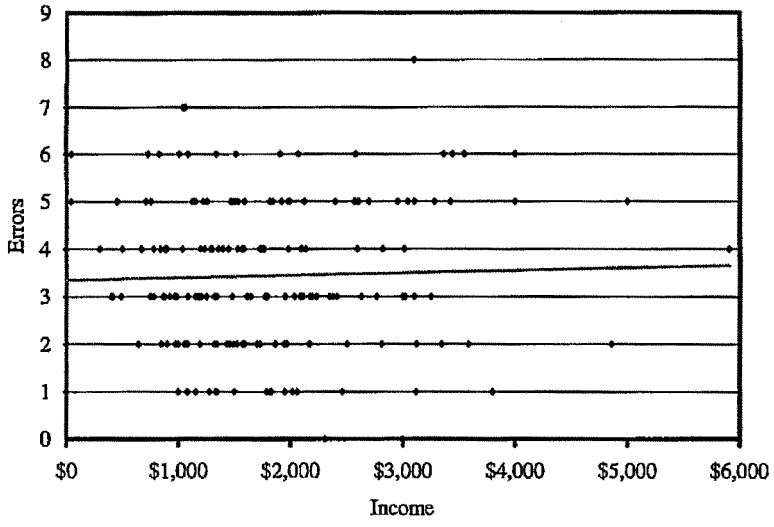

CHART 5. EXPENSES

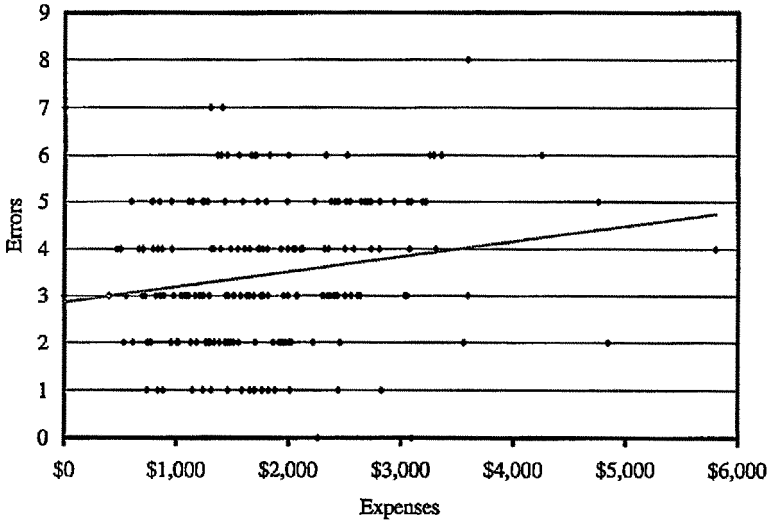

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CHART 6. ASSETS

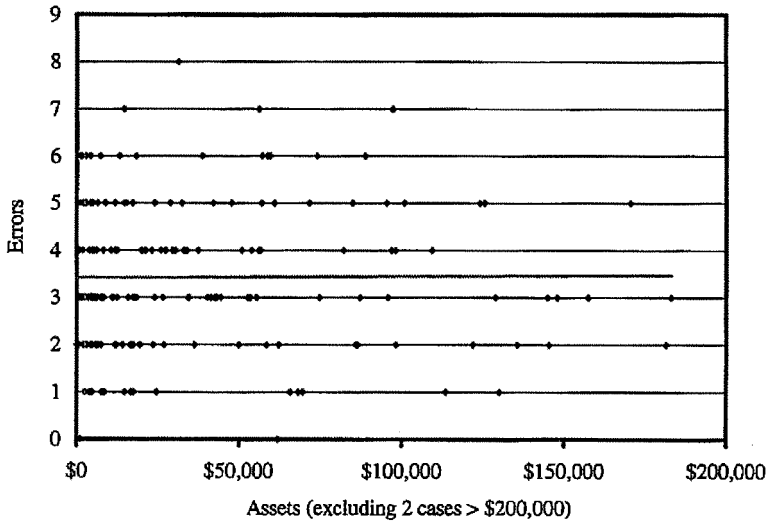
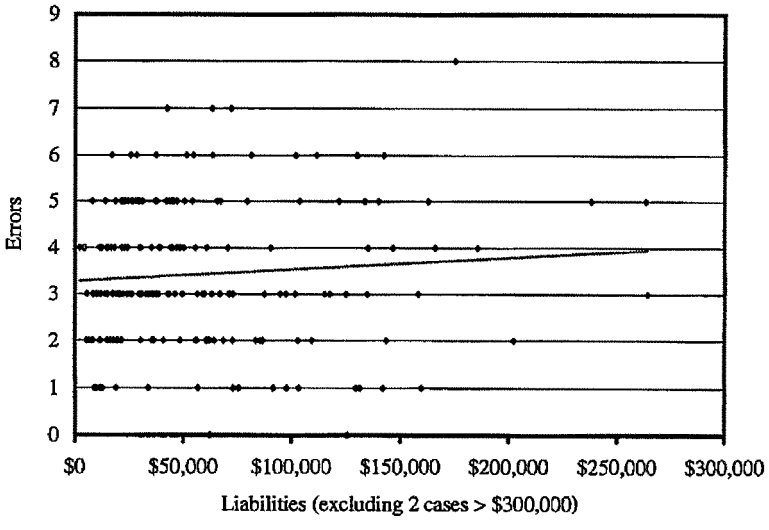


CHART 7. LIABILITIES



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VI. THE INADEQUACY OF PRESENTLY AVAILABLE REMEDIES

The data reviewed in this article suggest that the bankruptcy papers filed by consumer debtors and their attorneys are not accurate and complete, and are not prepared with the necessary care and understanding. The fundamental question raised by this study is how to motivate consumer debtors to file more accurate and complete disclosures.

The bankruptcy process offers a wide array of remedies for a debtor's intentionally wrongful conduct in a bankruptcy case.[110] This Part demonstrated that these remedies were not designed to address the issues raised in this study. For several reasons, attempts to invoke them for this purpose have not been and cannot be effective. First, these remedies are largely based upon a degree of wrongful intent that is well beyond the carelessness and inadvertence that this study found. Second, the parties with standing to pursue these remedies often lack the economic motivation to do so in these cases, because the processes that must be undertaken to invoke these remedies are time consuming, cumbersome and expensive. In this Part, each remedy was reviewed and its inadequacy explained.

The next Part will discuss other possible solutions that may be more effective.

A. Dismissal of the Chapter 7 or 13 Bankruptcy Case

The Bankruptcy Code firmly establishes the bankruptcy court's authority to dismiss chapter 7 and chapter 13 cases for "cause."[111] The debtor's "bad faith" can constitute cause for dismissal in either chapter 7 or chapter 13.[112]

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[110] *See* Wayne D. Holly, *Criminal and Civil Consequences of False Oaths in Bankruptcy Help Ensure Reliable Information*, 71-MAR N.Y. St. B.J. 38 (1999) (discussing bankruptcy crimes under 18 U.S.C. § 152 and objections to discharge under 11 U.S.C. § 727(a)).

[111] 11 U.S.C. §§ 707(a) and 1307(c) (1994).

[112] In chapter 7: Industrial Ins. Serv. v. Zick (*In re* Zick), 931 F.2d 1124, 1129 (6th Cir. 1991) (noting that dismissal under § 707(a) for bad faith "should be confined carefully and is generally utilized only in those egregious cases that entail concealed or misrepresented assets and/or sources of income, and excessive and continued expenditures, lavish lifestyle, and intention to avoid a large single debt based on conduct akin to fraud, misconduct, or gross negligence"). *See also In re* Kamen, 231 B.R. 275, 278 (Bankr. N.D. Ohio 1999); *In re* Houck, 199 B.R. 163, 164-65 (S.D. Ohio 1996); *In re* Moses, 227 B.R. 98, 101 (E.D. Mich. 1996) (holding that dismissal under § 707(a) was proper for the debtor's failure to provide sufficient information to permit the trustee to administer the estate); *In re* Cappuccetti, 172 B.R. 37, 39 (Bankr. E.D. Ark. 1994); Cassady-Pierce Co., Inc. v. Burns (*In re* Burns), 169 B.R. 563, 568 (Bankr. W.D. Pa. 1994); *In re* Hammonds, 139 B.R. 535, 542 (Bankr. D. Colo. 1992); *In re* Clark, 86 B.R. 593, 594 (Bankr. E.D. Ark. 1988). *See also* Hon. Tamara O. Mitchell, *Dismissal of Cases Via 11 U.S.C. § 707: Bad Faith and Substantial Abuse*, 102 Com. L.J. 355 (1997). *But see* Katie Thein Kimlinger and William P. Wassweiler, *The Good Faith Fable of 11 U.S.C. § 707(a): How Bankruptcy Courts Have Invented a Good Faith Filing Requirement for Chapter 7 Debtors*, 13 Bankr. Dev. J. 61 (1996).

In chapter 13: Leavitt v. Soto (*In re* Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999); *In re* Williams, 144 F.3d 544, 550 (7th Cir. 1998); *In re* Lilley, 91 F.3d 491, 496 (3rd Cir. 1996); Molitor v. Edison (*In re* Molitor), 76 F.3d 218, 220 (8th Cir. 1996); Gier v. Farmers State Bank of Lucas, Kansas (*In re* Gier), 986

In weighing whether there is bad faith constituting cause for dismissal, the bankruptcy court may consider the intentional concealment of assets or the lack of candor and completeness in the debtor's bankruptcy papers.[113] The focus of the court's inquiry is upon the debtor's honesty of intention.[114] Thus, inadvertent omissions or omissions due to the attorney's failure to properly review the papers do not establish cause for dismissal for bad faith.[115]

The court can also dismiss a consumer bankruptcy chapter 7 case if granting relief would be a "substantial abuse" of the provisions of chapter 7.[116] In defining "substantial abuse," many cases hold that the primary or exclusive focus is upon the debtor's ability to pay creditors through a hypothetical

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F.2d 1326, 1329 (10th Cir. 1993); Society Nat'l Bank v. Barrett (*In re* Barrett), 964 F.2d 588, 591 (6th Cir. 1992); Neufeld v. Freeman, 794 F.2d 149, 152 (4th Cir.1986); Shell Oil Co. v. Waldron (*In re* Waldron), 785 F.2d 936 (11th Cir.) *cert. dismissed*, 478 U.S. 1028, 106 S. Ct. 3343, 92 L. Ed. 2d 763 (1986); Johnson v. Vanguard Holding Corp. (*In re* Johnson), 708 F.2d 865, 867-68 (2nd Cir. 1983); United States v. Estus (*In re* Estus), 695 F.2d 311, 316 (8th Cir.1982).

[113]In Chapter 7: Industrial Ins. Serv. v. Zick (*In re* Zick), 931 F.2d 1124, 1128 (6th Cir. 1991); *In re* Moses, 227 B.R. 98, 101 (E.D. Mich. 1996).

In Chapter 13: Molitor v. Edison (*In re* Molitor), 767 F.3d 218, 220 (8th Cir. 1996) ("The bad faith determination focuses on the totality of the circumstances, specifically: (1) whether the debtor has stated his debts and expenses accurately; (2) whether he has made any fraudulent representation to mislead the bankruptcy court[.]"). *See also* Leavitt v. Soto, 1717 F.3d 1219, 1224 (9th Cir. 1998); Eisen v. Curry (*In re* Eisen), 14 F.3d 469, 470 (9th Cir. 1994); *In re* Love, 957 F.2d 1350, 1356 (7th Cir. 1992); Hardin v. Caldwell (*In re* Caldwell), 851 F.2d 852, 859 (6th Cir. 1988); *Estus*, 695 F.2d at 317 (Among the factors to be considered are "the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court."); *In re* Graffy, 216 B.R. 888, 891 (Bankr. M.D. Fla. 1998); *In re* Fernandez, 212 B.R. 361, 368 (Bankr. C.D. Cal. 1997), *aff'd*, 227 B.R. 174 (B.A.P. 9th Cir. 1998); New Jersey Lawyers' Fund for Client Protection v. Goddard, 212 B.R. 233, 238 (D.N.J. 1997); *In re* Cockings, 172 B.R. 257, 261 (Bankr. E.D. Ark. 1994) (Bad faith due in part to "incomplete schedules, most noteworthy, inadequate breakdown of expenses"); *In re* Bandini, 165 B.R. 317, 319 (Bankr. S.D. Fla. 1994); *In re* Meisner, 155 B.R. 519, 520 (Bankr. D. Neb. 1993); *In re* Standfield, 152 B.R. 528, 535 (Bankr. N.D. Ill. 1993), *appeal dismissed*, 1993 WL 192957 (N.D. Ill. 1993); *In re* Powers, 48 B.R. 120, 121 (Bankr. M.D. La. 1985).

[114]In Chapter 7: *In re* Marks, 174 B.R. 37, 40 (E.D. Pa. 1994); Cassidy-Pierce Co., Inc. v. Burns (*In re* Burns), 169 B.R. 563, 567 (W.D. Pa. 1994); *In re* Hammonds, 139 B.R. 535, 541 (Bankr. D. Colo. 1992); *In re* Campbell, 124 B.R. 462, 464 (Bankr. W.D. Pa. 1991).

In Chapter 13: Johnson v. Vanguard Holding Corp. (*In re* Johnson), 708 F.2d 865, 868 (2nd Cir. 1983); Barnes v. Whalen, 689 F.2d 193, 200 (D.C. Cir. 1982); *In re* Powers, 135 B.R. 980, 992 (Bankr. C.D. Cal. 1991).

[115]In Chapter 7: *In re* Khan, 172 B.R. 613, 625 (Bankr. D. Minn. 1994); Fahey Banking Co. v. Parsell (*In re* Parsell), 172 B.R. 226, 231 (Bankr. N.D. Ohio 1994); *In re* Josey, 169 B.R. 138, 140-41 (Bankr. S.D. Ohio 1994). *See also In re* Price, 211 B.R. 170, 172 (Bankr. M.D. Pa. 1997); *In re* Marks, 174 B.R. 37, 40 (E.D. Pa. 1994); Buck v. Buck (*In re* Buck), 166 B.R. 106, 109 (Bankr. M.D. Tenn. 1993).

Chapter 13: *In re* Stoutamire, 201 B.R. 592 (Bankr. S.D. Ga. 1996) (dismissing the case for failing to disclose an injury claim, but refusing to dismiss with prejudice because the attorney's interview form was inadequate to elicit the correct information); *In re* Fulton, 148 B.R. 838, 842-43 (Bankr. S.D. Tex. 1992) (holding that the debtor's failure to disclose his non-filing wife's interest in community property was not bad faith because debtor intended to disclose community nature of the interest).

[116]11 U.S.C. § 707(b) (1994). *See* Mitchell, *supra* note 112, at 359-72.

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chapter 13 plan; in this view, the accuracy and completeness of the debtor's papers are not explicitly considered.[117] Other courts apply the "totality of circumstances" test,[118] and some of the courts adopting this approach explicitly consider, as one factor, whether the debtor's schedules and statement of current income and expenses reasonably and accurately reflect the debtor's true financial condition.[119] Despite the differences in the approaches to this issue, there is general agreement that in adopting § 707(b), Congress was concerned about chapter 7 filings by "non-needy debtors."[120] Nevertheless, it is reasonably clear that a chapter 7 case will not be dismissed for "substantial abuse" merely because of inadvertent omissions in the debtor's papers.[121]

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[117]*See* Carl Felsenfeld, *Denial of Discharge for Substantial Abuse: Refining - Not Changing - Bankruptcy Law*, 67 FORDHAM L. REV. 1369 (1999); Richard E. Coulson, *Substantial Abuse of Bankruptcy Code Section 707(b): An Evolving Philosophy of Debtor Need*, 52 CONSUMER FIN. L.Q. REP. 261, 279 (1998); Carlos J. Cuevas, *The Consumer Credit Industry, The Consumer Bankruptcy System, Bankruptcy Code Section 707(b), and Justice: A Critical Analysis of the Consumer Bankruptcy System*, 103 COM. L.J. 359, 407 (1998).

[118]*See, e.g.*, Stuart v. Koch (*In re* Koch), 109 F.3d 1285, 1288 (8th Cir. 1997); Huckfeldt v. Huckfeldt (*In re* Huckfeldt), 39 F.3d 829, 831 (8th Cir. 1994); Fonder v. United States, 974 F.2d 996, 999 (8th Cir. 1992); Zolg v. Kelly (*In re* Kelly), 841 F.2d 908, 914 (9th Cir. 1988).

In any event, § 707(b) provides "There shall be a presumption in favor of granting the relief requested by the debtor."

[119]*In re* Krohn, 886 F.2d 123, 126 (6th Cir. 1989) ("It is not possible, of course, to list all the factors that may be relevant to ascertaining a debtor's honesty. Counted among them, however, would surely be the debtor's good faith and candor in filing schedules and other documents[.]"). *See also* Stewart v. United States Trustee (*In re* Stewart), 215 B.R. 456, 464 (B.A.P. 10th Cir. 1997), *aff'd*, 175 F.3d 796 (10th Cir. 1999); *In re* Rodriguez, 228 B.R. 601, 603 (Bankr. W.D. Va. 1999); *In re* Wisher, 222 B.R. 634, 637 (Bankr. D. Colo. 1998); *In re* Heasley, 217 B.R. 82, 87 (Bankr. N.D. Tex. 1998); *In re* Adams, 206 B.R. 456, 460 (Bankr. M.D. Tenn. 1997), *vacated on other grounds*, 209 B.R. 874 (Bankr. M.D. Tenn. 1997); United States Trustee v. Duncan (*In re* Duncan), 201 B.R. 889, 894 (Bankr. W.D. Pa. 1996).

Several courts of appeals have adopted the "totality of circumstances" test without explicitly suggesting that the accuracy of the schedules should be considered. *Stewart*, 175 F.3d 796; Kornfield v. Schwartz (*In re* Kornfield), 164 F.3d 778, 781 (2nd Cir. 1999); First USA v. Lamanna (*In re* Lamanna), 153 F.3d 1, 5 (1st Cir. 1998); Kestell v. Kestell (*In re* Kestell), 99 F.3d 146, 149 (4th Cir. 1996); Green v. Staples (*In re* Green), 934 F.2d 568, 572 (4th Cir. 1991).

[120]Stewart v. United States Trustee, 175 F.3d 796, 806 (10th Cir. 1999); *In re* Lamanna, 153 F.3d at 3-4; Stuart v. Koch (*In re* Koch), 109 F.3d 1285, 1290 (8th Cir. 1997); United States Trustee v. Harris, 960 F.2d 74, 76 (8th Cir. 1992); Green v. Staples (*In re* Green), 934 F.2d 568, 570 (4th Cir. 1991); *In re Krohn*, 886 F.2d 123, 125-26 (6th Cir. 1989); *In re* Walton, 866 F.2d 981, 983 (8th Cir. 1989).

In a comprehensive study of published decisions under § 707(b), one commentator found, "Despite rhetoric to the contrary, the preponderance of cases shows that the courts routinely apply only an excess income test." Felsenfeld, *supra* note 117, at 1369. This commentator concluded, "Courts frequently give lip service to the totality of the circumstances test(s) but fail to apply it in any meaningful sense." *Id.* at 1394.

See also Coulson, *supra* note 117, at 279 (explaining that ability to pay is the primary factor in totality of circumstances test); Cuevas, *supra* note 117, at 407 ("the real focus of [the totality of the circumstances] test is whether the debtor has the ability to pay").

[121]*In re* Hudson, 56 B.R. 415, 420 (Bankr. N.D. Ohio 1985), *order modified*, 64 B.R. 73 (Bankr. N.D. Ohio 1986) (explaining that under § 707(b), the court may examine whether debtor has exhibited good faith and has made full and accurate disclosure, but primary focus should be ability to pay); *In re* Penna, 86 B.R. 171, 173 (Bankr. E.D. Mo.1988) (denying a motion to dismiss because there no evidence that the

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Moreover, § 707(b) implicitly prohibits the trustee from bringing a motion to dismiss for substantial abuse.[122] Prohibiting the one who may be in the best position to discover and assert problems with the debtor's papers further suggests that this remedy was not designed to address those problems.

In denying a motion to dismiss under § 707(b), one court summarized the difficulty of using this remedy to address the problems with many debtors' papers:

> Mistakes and omissions are too frequent for this Court to assume that deceit is evident simply because mistakes are present. Insufficient information or poor advice is more likely one of the causes. A large percentage of income and expense statements are probably erroneous in some fashion or other, either because of simple negligence or oversight, or because of a lack of understanding of the forms or the significance of the questions asked, or because of miscommunication between debtors and their attorneys or, in joint cases, because of miscommunication between spouses.[123]

B. Denial of Discharge in Chapter 7 Cases

A chapter 7 debtor's discharge may be denied for an omission from or

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debtor's original understatement of income and expenses was intentional). *See also In re* Laury-Norvell, 157 B.R. 14, 16 (Bankr. N.D. Ohio 1993) (denying motion to dismiss because the inaccuracies in the debtor's schedules were properly attributable to the debtor's counsel rather than the debtor).

[122]Section § 707(b) provides that "the court, on its own motion or on motion by the United States Trustee, but not at the request or suggestion of any party in interest, may dismiss . . ." *See In re* Christian, 804 F.2d 46, 48 (3rd Cir. 1986) (holding that a creditor lacks standing to file a motion to dismiss under § 707(b)); *In re* Wisher, 222 B.R. 634, 636 (Bankr. D. Colo. 1998); Perniciaro v. Natale (*In re* Natale), 136 B.R. 344, 352 (Bankr. E.D.N.Y. 1992). This limitation was designed to insure "that such motions are not routinely made in every Chapter 7 case," Kornfield v. Schwartz (*In re* Kornfield), 164 F.3d 778, 784 (2nd Cir. 1999), and to protect the debtor from harassment by the creditors. Zolg v. Kelly (*In re* Kelly), 841 F.2d 908, 917 (9th Cir. 1988); United States Trustee v. Joseph (*In re* Joseph), 208 B.R. 55, 60 (B.A.P. 9th Cir. 1997); *In re* Fitzgerald, 155 B.R. 711, 715 (Bankr. W.D. Texas 1993).

Nevertheless, the United States Trustee can rely on information from the trustee and creditors, and once the United States Trustee brings a motion to dismiss, these parties may participate. 11 U.S.C. § 707(b) (1994); United States Trustee v. Clark (*In re* Clark), 927 F.2d 793, 797 (4th Cir.1991). *Contra*, *In re* Restea, 76 B.R. 728, 732-34 (Bankr. D.S.D. 1987) (denying the United States Trustee's motion to dismiss because creditors suggested to the United States Trustee's office that it should investigate the case for abuse).

If panel trustees are given standing under § 707(b), one court speculated, probably accurately: unfortunately, most panel trustees would never bring such motions anyway, as there is no economic incentive to do so, especially in no-asset cases where the trustee will only be paid $45 for handling the case. The cost of bringing the action is, in the usual case, not compensable unless the estate has assets. *In re* Fitzgerald, 155 B.R. 711, 713 n.1 (Bankr. W.D. Tex.1993).

[123]*In re* Attanasio, 218 B.R. 180, 229 (Bankr. N.D. Ala. 1988).

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misstatement in a schedule or a statement of financial affairs,[124] if it was knowing and fraudulent, and related to a material matter.[125] In addition, the discharge may be denied for intentionally concealing property by failing to disclose it in the schedules.[126] However, denying the discharge is not warranted for misstatements or omissions resulting from confusion, misunderstanding, haste, inadvertence or attorney error.[127] Further, this remedy does not apply to a chapter 13 debtor.[128]

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[124]Under 11 U.S.C. § 727(a)(4)(A), quoted in note 15, *supra*, such an omission or misstatement may constitute a "false oath." *In re* Chavin 150 F.3d 726 (7th Cir. 1998); Beaubouef v. Beaubouef (*In re* Beaubouef); 966 F.2d 174 (5th Cir. 1992); Williamson v. Fireman's Fund Ins. Co., 828 F.2d 249 (4th Cir. 1987); *Chalik*, 748 F.2d at 617-18; Smith v. Grondin (*In re* Grondin), 232 B.R. 274, 277 (B.A.P. 1st Cir. 1999). *See also* Craig H. Averch, *Denial of Discharge Litigation*, 16 REV. LITIG. 65, 106-07 (1997); Wayne D. Holly, *Criminal and Civil Consequences of False Oaths in Bankruptcy Help Ensure Reliable Information*, 71-MAR N.Y. ST. B.J. 38, 38-39 (1999).

[125]Desmond v. Varrasso (*In re* Varrasso), 37 F.3d 760, 764 (1st Cir. 1994); Bennett v. Hollingsworth (*In re* Hollingsworth), 224 B.R. 822, 830 (Bankr. M.D. Fla. 1998).

[126]11 U.S.C. § 727(a)(2), quoted in note 15, *supra*. *Chavin*, 150 F.3d 726; Gullickson v. Brown (*In re* Brown), 108 F.3d 1290, 1295 (10th Cir. 1997).

[127]Gullickson v. Brown (*In re* Brown), 108 F.3d 1290, 1295 (10th Cir. 1997); Citizens First Nat'l Bank v. Hunter (*In re* Hunter), 229 B.R. 851, 858 (Bankr. M.D. Fla. 1999); Kilburn v. Filby (*In re* Filby), 225 B.R. 532 (Bankr. D.N.H. 1998); Cohen v. Pond (*In re* Pond), 221 B.R. 29, 34 (Bankr. M.D. Fla. 1998); Williamson Constr., Inc. v. Ross (*In re* Ross), 217 B.R. 319 (Bankr. M.D. Fla. 1998); Hunter v. Shoup (*In re* Shoup), 214 B.R. 166, 177 (Bankr. N.D. Ohio 1997); Kirchner v. Kirchner (*In re* Kirchner), 206 B.R. 965 (Bankr. W.D. Mo. 1997); Stone v. Stone (*In re* Stone), 199 B.R. 753 (Bankr. N.D. Ala. 1996); Roeder v. Ziegler (*In re* Ziegler), 156 B.R. 151 (Bankr. W.D. Pa. 1993); Perniciaro v. Natale (*In re* Natale), 136 B.R. 344, 349 (Bankr. E.D.N.Y. 1992); Ashton v. Burke (*In re* Burke), 83 B.R. 716, 720-21 (Bankr. D.N.D. 1988). *But see* Boroff v. Tully (*In re* Tully), 818 F.2d 106, 111 (1st Cir. 1987) ("Nor can an attorney's willingness to bear the burden of reproach provide blanket immunity to a debtor; it is well settled that reliance upon advice of counsel is, in this context, no defense where it should have been evident to the debtor that the assets ought to be listed in the schedules."). *See also* Gregory E. Maggs, *Consumer Bankruptcy Fraud and the "Reliance on Advice of Counsel" Argument*, 69 AM. BANKR. L.J. 1 (1995).

Similarly, many courts do not deny the discharge if the debtor reports the omission or misstatement at the creditors meeting. *Brown*, 108 F.3d at 129; Baker v. Mereshian (*In re* Mereshian), 200 B.R. 342, 346 (B.A.P. 9th Cir. 1996); Williamson Constr., Inc. v. Ross (*In re* Ross), 217 B.R. 319 (Bankr. M.D. Fla. 1998). *But see* Barnett Bank of Tampa, N.A. v. Muscatell (*In re* Muscatell), 113 B.R. 72, 75 (Bankr. M.D. Fla. 1990); Job v. Calder (*In re* Calder), 93 B.R. 734, 738 (Bankr. D. Utah 1988), *aff'd*, 907 F.2d 953 (10th Cir. 1990).

It is no defense that the debtor believed that the omitted property was worthless. Chalik v. Moorefield (*In re* Chalik), 748 F.2d 616, 618 (11th Cir. 1984); Krudy v. Scott (*In re* Scott), 227 B.R. 834, 842 (Bankr. S.D. Ind. 1998); Law Office of Larry A. Henning v. Mellor (*In re* Mellor), 226 B.R. 451, 458 (D. Colo. 1998); Stanley v. Hoblitzell (*In re* Hoblitzell), 223 B.R. 211, 215 (Bankr. E.D. Cal. 1998); Congress Talcott Corp. v. Sicari (*In re* Sicari), 187 B.R. 861, 882 (Bankr. S.D.N.Y. 1994); Lister v. Gonzalez (*In re* Gonzalez), 92 B.R. 960, 962 (Bankr. S.D. Fla. 1988).

[128]Generally, the provisions of chapter 7 apply only in chapter 7 cases. 11 U.S.C. § 103(b) (1994). Nothing in chapter 13 allows an objection to the discharge of a chapter 13 debtor for false oath or concealment. Deans v. O'Donnell (*In re* Deans), 692 F.2d 968, 971 n.5 (4th Cir. 1982); Gayton v. Haney (*In re* Gayton), 61 B.R. 612, 613 (9th Cir. B.A.P. 1986); *In re* Girdaukas, 92 B.R. 373, 376 (Bankr. E.D. Wis. 1988); United States v. Vlavianos (*In re* Vlavianos), 71 B.R. 789, 795 n.3 (Bankr. W.D. Va. 1986) ("The provisions of 11 U.S.C. § 727(a), which set out ten grounds for denying a debtor a discharge, do not apply to discharges granted in Chapter 13 cases."); Cornett v. Galt (*In re* Galt), 70 B.R. 57, 59 (Bankr. S.D. Ohio 1987).

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An adversary proceeding is required to deny a debtor's discharge.[129] This process involves a complaint, an answer, discovery, motions, a trial, and, possibly, multiple appeals.[130] The party objecting to the discharge bears the burden of proof by a preponderance of the evidence.[131]

An objection to the discharge can be filed by a creditor, the trustee or the United States Trustee.[132] However, it is rare for a creditor to be motivated to object to the debtor's discharge, probably because in most cases the debtor's conduct does not meet the strict requirements for denying the discharge and the creditor's debt does not justify the expense.[133] Similarly, although the trustee is under a duty to oppose the discharge "if advisable,"[134] the trustee rarely has sufficient assets to fund such litigation.[135] Even if the

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[129]FED. R. BANKR. P. 7001(4); *In re* Little, 220 B.R. 13, 16 (Bankr. D.N.J. 1998); *In re* Goodwin, 163 B.R. 825, 834 (Bankr. D. Idaho 1993).

[130]*See* FED. R. BANKR. P. 7001 - 8020. These rules incorporate by reference most of the Federal Rules of Civil Procedure.

[131]Fed. R. Bankr. P. 4005; Peterson v. Scott (*In re* Scott), 172 F.3d 959, 966-67, (7th Cir. 1999); Barclays/American Bus. Credit, Inc. v. Adams (*In re* Adams), 31 F.3d 389, 394 (6th Cir. 1994), *cert. denied*, 513 U.S. 1111, 115 S. Ct. 903, 130 L. Ed. 2d 786 (1995); Farouki v. Emirates Bank Int'l, Ltd. (*In re* Farouki), 14 F.3d 244, 249 n.17 (4th Cir. 1994); Beauboeuf v. Beauboeuf (*In re* Beauboeuf), 966 F.2d 174 (5th Cir. 1992); First Nat'l Bank of Gordon v. Serafini (*In re* Serafini), 938 F.2d 1156, 1157 (10th Cir. 1991).

[132]11 U.S.C. § 727(c)(1) (1994).

[133]*In re* Sebosky, 182 B.R. 912 (Bankr. M.D. Fla. 1995). Some courts allow attorney fees as an administrative expense under § 503(b) to a creditor that prosecutes an objection to discharge. *In re* Zedda, 169 B.R. 605 (Bankr. E.D. La. 1994); Jacobson v. Reese Speece Properties, Inc. (*In re* Speece), 159 B.R. 314 (Bankr. E.D. Cal. 1993); *In re* Rumpza, 54 B.R. 107 (Bankr. D.S.D. 1985); Johnson Mem'l Hosp. v. Hess, 44 B.R. 598, 600 (W.D. Va. 1984); *In re* George, 23 B.R. 686, 687 (Bankr. S.D. Fla. 1982) (trustee was awarded fees of $330, the trustee's attorney, $2,000, and the creditor's attorney, $1873 plus $486 in costs; the funds in the estate were $4970).

There is a split in the cases on whether prior court approval is required for an award of fees. Some cases hold that such approval is not required. *E.g., Zedda*, 169 B.R. 605. However, other courts deny fees in the absence of such approval. *In re* Lagasse, 228 B.R. 223 (Bankr. E.D. Ark. 1998); *In re* Monahan, 73 B.R. 543 (Bankr. S.D. Fla. 1987); *In re* Romano, 52 B.R. 590 (Bankr. M.D. Fla. 1985); *In re* Spencer, 35 B.R. 280 (Bankr. N.D. Ga. 1983); Lazar v. Casale (*In re* Casale), 27 B.R. 69 (Bankr. E.D.N.Y. 1983); *In re* Johnson, 72 B.R. 115, 118 (Bankr. E.D.N.C. 1987) ("The reason for a rule prohibiting compensation for unauthorized services is to enable the court to maintain control of costs and to insure that estate assets are not wasted. Duplication of services between a creditor and the trustee or a creditors' committee is to be avoided. By asking for prior approval to bring a complaint, a creditor provides the trustee with an opportunity to indicate whether he is willing and able to pursue the action in question." (citations omitted)). One court requiring prior approval granted that approval nunc pro tunc and allowed fees to the creditor's attorney for objecting to the debtor's discharge. *In re* Antar, 122 B.R. 788 (Bankr. S.D. Fla. 1990).

[134]11 U.S.C. § 704(6) (1994).

[135]As observed in note 85, *supra*, all of the chapter 7 cases in this study were no asset cases.

"It may be true that the cost of opposing a discharge may be too great to make opposing a discharge 'advisable,' particularly where all creditors are given notice of the trustee's dilemma but not a single one shows interest in helping the trustee deal with the problem of costs." Moister v. Vickers (*In re* Vickers), 176 B.R. 287, 289 (Bankr. N.D. Ga. 1994)

See also Jacobson v. Robert Speece Properties, Inc. (*In re* Speece), 159 B.R. 314, 322 n.12 (Bankr. E.D. Cal. 1993) ("The realities are that trustees commonly take a back seat when a creditor objects to discharge in order to conserve resources[.]"); Mary Jo Heston, *The United States Trustee: The Missing Link of*

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trustee has assets, allocating them to opposing the debtor's discharge may well reduce the dividend to creditors.[136] The United States Trustee rarely objects to the discharge, probably as a matter of resource allocation and prioritization within that program.[137] As a result, this remedy is of little value in motivating more accurate schedules in consumer chapter 7 cases.[138]

C. Denial or Limitation of the Debtor's Exemptions in Chapter 7

The inadequate disclosure of a debtor's assets in chapter 7 may result in

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Bankruptcy Crime Prosecutions, 6 Am. Bankr. Inst. L. Rev. 359, 361 (1998) ("Bankruptcy trustees are often unable to thoroughly investigate estates where there are no readily accessible assets available to fund the costs of administration." (footnote omitted)); Ralph C. McCullough II, *Bankruptcy Fraud: Crime Without Punishment II*, 102 Com. L.J. 1, 12 (1997) ("In these 'no asset' cases, the trustee, who represents the unsecured creditors, does not see the ability to recover money for them, and he sends the bankruptcy case through with little questioning; not necessarily because the trustee doesn't wish to bother with the case, with the tremendous demands on his time, rather it is simply impossible for him to do so.") Hon. Jim D. Pappas, *We've Got to Stop Meeting Like This*, 14-SEP Am. Bankr. Inst. J. 35, 35 (September, 1995) ("As a practical matter, these 'meetings' are a joke. Depending upon the local practice, 10 or more meetings are scheduled per hour, guaranteeing that no meaningful examination of the debtor occurs." (footnote omitted)).

"If the trustee has information that would support an objection to discharge but deems such an action inadvisable, the trustee should promptly bring such facts to the attention of the United States Trustee." United States Department of Justice, Executive Office for United States Trustees, Handbook for Chapter 7 Trustees, pp. 6-9 (effective October 1, 1998).

[136]*See, e.g., In re* Arnold, 162 B.R.775 (Bankr. E.D. Mich. 1993) (awarding trustee's counsel fees of $4053.75 from the estate for prosecuting an unsuccessful objection to discharge); *In re Kearns*, 162 B.R. 10 (Bankr. D. Kan. 1993) (awarding trustee's attorney fees of $6561.75 to pursue objection to discharge; estate had funds of $1347.65).

The trustee's economic disincentive to pursue an objection to discharge is further exacerbated by the public policy against settling an objection to discharge claim upon the debtor's payment of money. *See Vickers*, 176 B.R. at 290 ("Discharges are not property of the estate and are not for sale. It is against public policy to sell discharges. Selling discharges would be a disease that would attack the heart of the bankruptcy process, its integrity." (citation omitted)); *In re* Moore, 50 B.R. 661, 664 (Bankr. E.D. Tenn. 1985) ("Under no circumstances, not even where the intent is innocent, may a debtor purchase a repose from objections to discharge. A discharge in bankruptcy depends on the debtor's conduct; it is not an object of bargain."). *See also In re* Wilson, 196 B.R. 777, 778-79 (Bankr. N.D. Ohio 1996); *Jacobson*, 159 B.R. 314.

But see In re Bates, 211 B.R. 338, 348 (Bankr. D. Minn. 1997) ("[T]he proposed settlement represents an attempt by the Trustee to act in the best interests of the estate by limiting the estate's exposure to the risks and expenses of trial in the face of an uncertain outcome."); *In re* Mavrode, 205 B.R. 716 (Bankr. D.N.J. 1997).

Whatever the merits of these considerations, it must also be recognized that a trustee's incentive to file an objection to discharge might well be impaired if the trustee will not be permitted to settle it and must either take it to trial or seek to dismiss it.

[137]Nothing in the United States Department of Justice, United States Trustee Manual, volume 1 (August 1988) or volume 2 (October 1996), addresses the circumstances under which the United States Trustee will object to a debtor's discharge.

[138]In 1998 in the Eastern District of Michigan, in 20,905 consumer chapter 7 cases, 108 objections to discharge were filed (0.5%). These objections to discharge were not further analyzed to determine the number that alleged false oath under § 727(a)(4) or concealment of property under § 727(a)(2).

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denying or limiting the debtor's exemptions, but only if accompanied by bad faith, concealment, fraud, abuse of process or intention to deceive.[139] In the absence of such circumstances, the court will permit the debtor to amend the schedules to exempt any omitted property.[140] Moreover, the focus of the exemption issue is strictly upon asset disclosure, while the problems observed in the study involved many other disclosure obligations. Also, exemption issues are much less significant in chapter 13 cases.[141] Accordingly, like the

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[139]Payne v. Wood, 775 F.2d 202, 205 (7th Cir. 1985); *In re* Montanez, 233 B.R. 791, 796 (Bankr. E.D. Mich. 1999); *In re* Barber, 223 B.R. 830, 833 (Bankr. N.D. Ga.1998); *In re* Stinson, 221 B.R. 726, 728 (Bankr. E.D. Mich. 1998); *In re* Lundy, 216 B.R. 609, 610 (Bankr. E.D. Mich. 1998); *In re* Schachter, 214 B.R. 767, 778 (Bankr. E.D. Pa. 1997); *In re* St. Angelo, 189 B.R. 24, 26 (Bankr. D.R.I. 1995); *In re* Markmueller, 165 B.R. 897, 900 (Bankr. E.D. Mo. 1994), *order corrected*, 167 B.R. 899 (Bankr. E.D. Mo. 1994), *aff'd*, 51 F.3d 775 (8th Cir. 1995); *In re* Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd without op.*, 24 F.3d 247 (9th Cir. 1994) (unpublished table decision); B.K. Medical Sys., Inc. Pension Plan v. Roberts (*In re* Roberts), 81 B.R. 354, 360 (Bankr. W.D. Pa. 1987); *In re* Wenande, 107 B.R. 770 (Bankr. D. Wyo. 1989).

Exemptions may be limited in value due to inadequate disclosure. *In re* Doyle, 209 B.R. 897, 902 (Bankr. N.D. Ill. 1997) ("The Schedules filed in this case are illustrative of the problems resulting from hasty and incomplete draftsmanship - inadequately detailed information which effectively precludes the Trustee, the creditors, and the Court from learning what the Debtors' assets really are, especially what is being properly claimed exempt."). Ambiguities in the claim of exemption may be construed against the debtor. Addison v. Reavis, 158 B.R. 53, 59 (E.D. Va. 1993), *aff'd sub nom.*, *In re* Grablowsky, 32 F.3d 562 (4th Cir. 1994); Anislie v. Grablowsky (*In re* Grablowsky), 149 B.R. 402, 406 (Bankr. E.D. Va. 1993); *In re* Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992).

See also 11 U.S.C. § 522(g)(1) (1994), which permits the debtor to exempt property recovered by the trustee, but only if the transfer of the property was neither voluntary nor concealed by the debtor. Glass v. Hitt (*In re* Glass), 60 F.3d 565, 568 (9th Cir. 1995); Sherk v. Texas Bankers Life & Loan Ins. Co. (*In re* Sherk), 918 F.2d 1170, 1176 (5th Cir. 1990); Simonson v. First Bank of Greater Pittston (*In re* Simonson), 758 F.2d 103, 106 (3rd Cir. 1985); Redmond v. Tuttle, 698 F.2d 414 (10th Cir. 1983); Trujillo v. Grimmett (*In re* Trujillo), 215 B.R. 200, 204-05 (B.A.P. 9th Cir. 1997), *aff'd*, 166 F.3d 1218 (9th Cir. 1998).

The party objecting to the exemption has the burden of proof. FED. R. BANKR. P. 4003(c).

[140]Doan v. Hudgins (*In re* Doan), 672 F.2d 831, 833 (11th Cir. 1982); *In re* Martin, 205 B.R. 145, 146 (Bankr. E.D. Ark. 1997), *aff'd*, 213 B.R. 574 (E.D. Ark. 1997), *rev'd on other grounds*, 140 F.3d 806 (8th Cir. 1998); *In re* Williams, 197 B.R. 398, 403-04 (Bankr. M.D. Ga. 1996); *In re* Brown, 178 B.R. 722, 728 (Bankr. E.D. Tenn. 1995); *In re* Corbi, 149 B.R. 325, 330 (Bankr. E.D.N.Y. 1993); *In re* Gaudet, 109 B.R. 548, 549 (Bankr. D.R.I. 1989); Jones v. Burgess (*In re* Burgess), 1 B.R. 421, 426 (Bankr. M.D. Tenn. 1979).

[141]Exemptions, which are set forth in § 522(d) and state law, apply in both chapter 7 and chapter 13. 11 U.S.C. § 103(a) (1994); *In re* Schnabel, 153 B.R. 809, 817 (Bankr. N.D. Ill. 1993). However, in chapter 13 cases, their significance is "greatly diminished." 11 U.S.C. § 103(a) (1994). In chapter 13, the debtor is permitted to keep all assets, exempt or not. *In re* Cornelius, 195 B.R. 831, 835 (Bankr. N.D.N.Y. 1995); *In re* Mitchell, 80 B.R. 372, 380 (Bankr. W.D. Tex. 1987) ("On confirmation of the plan, all the property of the debtor, whether claimed exempt or not, will belong to the debtor, and upon completion of the plan, the debtor and all of his or her unencumbered property will be discharged from creditors' claims. *See* 11 U.S.C. §§ 1327(b), 1328(a). The *raison d'etre* for objecting to a debtor's exemption claims thus evaporates in a chapter 13 case"). Exemptions under chapter 13 are only informational. *In re* Morris, 48 B.R. 313, 314 (W.D. Va. 1985). Exemptions are listed in chapter 13 only to permit the court to determine in confirming the plan that the creditors receive more under the plan than they would in a chapter 7 liquidation, pursuant to § 1325(a)(4) (1994). Armstrong v. Lindberg (*In re* Lindberg), 735 F.2d 1087, 1089 (8th Cir.), *cert. denied*, 469 U.S. 1073, 105 S. Ct. 566, 83 L. Ed. 2d 507 (1984). *See also In re* Edwards, 105 B.R. 10, 11 (Bankr. W.D. Va. 1989).

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remedies previously reviewed, this remedy does not address the problems observed in the study.

D. Denial or Reduction of Fees for Debtor's Attorney

11 U.S.C. § 329(b) allows the bankruptcy court to order the return of any payment to the debtor's attorney, or cancel any fee agreement, if the compensation exceeds the reasonable value of the attorney's services. In a few reported cases, courts have reduced or denied fees for consumer debtor attorneys due to inaccurate or incomplete disclosures in the bankruptcy papers.[142] However, nothing suggests that this remedy has been used on a regular basis to address problems in debtors' papers.

E. Monetary Sanctions Under Bankruptcy Rule 9011

On December 1, 1997, major changes took effect in Bankruptcy Rule 9011. Previously, the rule provided that the bankruptcy court could sanction a party for signing and filing any paper that was not well grounded in fact "to the best of the party's knowledge, information and belief, formed after a reasonable inquiry."[143] If the debtor's initial bankruptcy papers violated this rule, the debtor could be sanctioned.[144] However, the debtor's attorney was excused from the requirement to sign the schedules or the statement of financial affairs, and was not ordinarily subject to sanctions under this rule.[145]

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[142]Matter of Geraci, 138 F.3d 314, 318 (7th Cir.), *cert. denied*, __ U.S. __, 119 S. Ct. 63, 142 L. Ed. 2d 50 (1998) (The attorney's performance was "not up to a level that [the bankruptcy court] sees from the majority of practitioners who regularly appear before it.") (quoting from *In re* Chellino, 209 B.R. 106, 120-21 (Bankr. C.D. Ill. 1996)); Slaton v. Raleigh, 1998 WL 684210 (N.D. Ill. 1998); Bill Parker & Assocs. v. Flatau (*In re* Rainwater), 124 B.R. 133, 139 (M.D. Ga.1991), *aff'd*, 943 F.2d 1318 (11th Cir. 1991) (conflicting information in schedules); *In re* Woodward, 229 B.R. 468, 476 (Bankr. N.D. Okla. 1999) (failure to disclose fee paid and undervaluing asset); *In re* Barber, 223 B.R. 830, 834 (Bankr. N.D. Ga. 1998) (failure to disclose debtor's personal injury claim); *In re* Ludwick, 185 B.R. 238, 244 (Bankr. W.D. Mich. 1995) (attorney's forgery of the debtor's signature); *In re* Corbett, 145 B.R. 332 (Bankr. M.D. Fla. 1992) (having clients sign forms in blank); *In re* Bennett, 133 B.R. 374, 378-79 (Bankr. N.D. Tex. 1991) (undisclosed retainer); *In re* Dalton, 95 B.R. 857, 860 (Bankr. M.D. Ga. 1989), *aff'd*, 101 B.R. 820 (M.D. Ga. 1989) (false statement of compensation).

[143]Fed. R. Bankr. P. 9011 (prior to December 1, 1997 amendment).

[144]Caldwell v. Unified Capital Corp. (*In re* Rainbow Magazine, Inc.), 77 F.3d 278, 282 (9th Cir. 1996) (debtor's principal sanctioned $45,000 for filing a false statement of financial affairs); Stuebben v. Gioioso (*In re* Gioioso), 979 F.2d 956 (3rd Cir. 1992) (explaining that sanctions must be awarded for bad faith opposition to motion for summary judgment on claim of intentional omission of assets); *In re* Famisaran, 224 B.R. 886, 893 (Bankr. N.D. Ill. 1998); *In re* Graffy, 233 B.R. 894 (Bankr. M.D. Fla. 1999) (awarding sanctions against the debtor under Rule 9011 and the inherent power of the court under § 105(a)); *In re* Eatman, 182 B.R. 386, 396 (Bankr. S.D.N.Y. 1995); Railroad Center v. Thompson (*In re* Thompson), 165 B.R. 30, 32-33 (Bankr. M.D. Tenn. 1994). *But see In re* Smith, 143 B.R. 912, 914 (Bankr. D. Neb. 1992) (refusing to impose sanctions against debtors for claiming property as exempt in bankruptcy schedules without any legal basis, because "mistake in bankruptcy schedules was due to admitted error of counsel").

[145]McGarhen v. First Citizens Bank & Trust Co. (*In re* Weiss), 111 F.3d 1159, 1170 (4th Cir. 1997), *cert. denied*, __ U.S. __, 118 S. Ct. 369, 139 L. Ed. 2d 287 (1997); Cohn v. United States Trustee (*In re* Ostas), 158 B.R. 312, 319 (N.D.N.Y. 1993); *In re* Palumbo Family Ltd. Partnership, 182 B.R. 447, 475-76

Nevertheless, on occasion, courts did impose sanctions against attorneys.[146] In several cases, joint liability was imposed.[147] However, in several cases involving inaccurate schedules, courts refused to impose sanctions under this rule.[148]

The amended rule effects four substantial changes.[149] First, although the debtor's attorney is still excused from the signing requirement, the new rule provides that the act implicating the legal responsibility for a paper is presenting the paper to the court, whether by signing, filing, submitting or later advocating it.[150] Second, the new certification that is triggered upon presentation of the paper is that to the best of that person's knowledge, information and belief, "the allegations and other factual contentions have evidentiary support."[151] This may well be interpreted to require a greater standard of prefiling inquiry than the "well grounded in fact" standard of the old rule. Thus, taken together, these two changes appear to place on a debtor's attor-

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(Bankr. E.D. Va. 1995); *In re* Eatman, 182 B.R. 386, 396 (Bankr. S.D.N.Y. 1995); *In re* Remington Dev. Group, Inc., 168 B.R. 11, 15 (Bankr. D.R.I. 1994); Barnett Bank of Tampa, N.A. v. Muscatell (*In re* Muscatell), 116 B.R. 295, 298 (Bankr. M.D. Fla. 1990); *In re* Alderson, 114 B.R. 672, 677 (Bankr. D.S.D. 1990). *See also In re* Saturley, 131 B.R. 509, 518-19 (Bankr. D. Me. 1991) ("The Chapter 7 debtor's attorney, although not without obligations regarding the truthfulness and accuracy of documents filed by or on behalf of his client, is specifically relieved of the requirement that he or she sign, and thereby certify, the debtor's schedules.").

In *Eatman*, 182 B.R. at 396, the court concluded that although sanctions against the attorney were not appropriate under Rule 9011, the attorney should be sanctioned under 11 U.S.C. § 105 and 28 U.S.C. § 1927. *See also* White v. Mitchell (*In re* Hardee), 165 F.3d 18 (4th Cir. 1998) (unpublished table decision available at 1998 WL 766699).

[146]*In re* Moix-McNutt, 220 B.R. 631, 636 (Bankr. E.D. Ark. 1998); *In re* Cossey, 172 B.R. 597, 601 (Bankr. E.D. Ark. 1994); *In re* Ridner, 102 B.R. 247, 249-50 (Bankr. W.D. Okla. 1989); *In re* Smith, 143 B.R. 912, 914 (Bankr. D. Neb. 1992) ("The fact that [debtor's] counsel does not sign bankruptcy schedules does not provide a justification for counsel to assume the position of ostrich, head buried in the sand, while client claims exemptions unsupported by law. . . . If claimed exemptions are not supported by law, counsel is subject to sanctions."); Iannacone v. Hill (*In re* Hill), 39 B.R. 599, 601 (Bankr. D. Minn. 1984) (the debtor's attorney was sanctioned $1000 for claiming improper exemptions on schedule C; the court also relied on 28 U.S.C. § 1927).

[147]Estate of Perlbinder v. Dubrowsky (*In re* Dubrowsky), 206 B.R. 30, 36 (Bankr. E.D.N.Y. 1997); *In re* Armwood, 175 B.R. 779, 788 (Bankr. N.D. Ga. 1994); *In re* Pasko, 97 B.R. 913, 918 (Bankr. N.D. Ill. 1988); Snow v. Jones (*In re* Jones), 41 B.R. 263, 268 (Bankr. C.D. Cal. 1984). *See also* National Indem. Co. v. Proia (*In re* Proia), 35 B.R. 385, 388-89 (Bankr. D.R.I. 1983).

[148]In *In re Bove*, 29 B.R. 904 (Bankr. D.R.I. 1983), the petition and schedules contained significant omissions and misstatements, but the court declined to hold the debtors in contempt or to impose monetary sanctions against the debtors, because the capacity and general awareness of one debtor was diminished and she bore none of the responsibility, and the misrepresentations made by the other debtor were induced partly by the principal of a consumer credit organization, probably on behalf of an attorney, and no action was sought against the principal of the credit counseling firm or the attorney.

[149]FED. R. BANKR. P. 9011. *See* Arnold M. Quittner, *Current Developments in Bankruptcy and Reorganization: Employment and Compensation of Appointed Professionals*, 788 PRAC. L. INST./COM. L. & PRAC. COURSE HANDBOOK SERIES 561, 971 (1999).

[150]FED. R. BANKR. P. 9011(b).

[151]FED. R. BANKR. P. 9011(b)(3).

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ney substantial new responsibilities for the debtor's schedules and statement of financial affairs.[152]

The third change is that generally, a motion for sanctions under the rule must be served twenty-one days before filing, to give a "safe harbor" opportunity to correct the alleged deficiency.[153]

The fourth change is that even if a violation of the rule is found, the imposition of sanctions is now discretionary, not mandatory.[154]

Even though the debtor's attorney now bears responsibility for the schedules and statement of financial affairs, it is unlikely that Rule 9011, as amended, will have any substantial impact on the problems of incomplete and careless schedules. Even when the rule mandated sanctions for a violation, bankruptcy courts were reluctant to do so unless the circumstances were outrageous.[155] Further, as noted, the imposition of sanctions is now explicitly discretionary.[156]

F. Administrative Sanctions Against the Debtor's Attorney

In extraordinary circumstances, the court may respond more severely. For example, in *In re Ludwick*, the bankruptcy court suspended debtor's attorney from practice for two years for forging the debtor's signature on the petition and lying about it to the court.[157] In *O'Connell v. Mann (In re Davila)*, an attorney representing chapter 13 debtors was denied fees in one

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[152]"The new Rule 9011, which requires attorneys to make reasonable inquiry into the accuracy of the information being provided to the courts, will remind lawyers that they serve as gatekeepers for the truth." *The Commission's Consumer Bankruptcy Recommendations*, Consumer Bankruptcy News, November 20, 1997, at 3. The Bankruptcy Review Commission actually recommended making Rule 9011 explicit that "an attorney's responsibility to make a reasonable inquiry into the accuracy of information extends to the bankruptcy schedules, statement of affairs, lists and amendments." Commission Report, *supra* note 2, at 113.

[153]Fed. R. Bankr. P. 9011(c)(1)(A). *See In re* Russ, 218 B.R. 461, 468 (Bankr. D. Minn. 1998), *aff'd*, 221 B.R. 237 (B.A.P. 8th Cir. 1998) (denying a motion under Bankruptcy Rule 9011 due to the moving party's failure to comply with the new safe harbor provisions); *In re* Smith, 230 B.R. 437, 440-41 (Bankr. N.D. Fla. 1999).

See also In re Melendez, 235 B.R. 173, 201 n.24 (Bankr. D. Mass. 1999) (the "safe harbor" provision does not apply when the court initiates the sanctions issue); H.J. Rowe, Inc. v. Spiegel (*In re* Talon Holdings, Inc.) 1999 WL 150337 at *3 (Bankr. N.D. Ill. 1999) (the "safe harbor" provision does not apply to the petition itself under Rule 9011(c)(1)(A)).

[154]"If . . . the court determines that subdivision (b) has been violated, the court may . . . impose an appropriate sanction . . ." Fed. R. Bankr. P. 9011(c).

[155]Nathalie D. Martin, *Fee Shifting in Bankruptcy: Deterring Frivolous, Fraud-Based Objections to Discharge*, 76 N.C. L. Rev. 97, 147 (1997) ("Bankruptcy courts still are reluctant to impose sanctions under Rule 9011 unless the behavior in question is truly outrageous and not just ignorant.").

[156]*See supra* note 154.

[157]185 B.R. 238 (Bankr. W.D. Mich. 1995). *See also* D. H. Overmyer Co., Inc. v. Robson, 750 F.2d 31, 33 (6th Cir. 1984) ("The bankruptcy court has both statutory and inherent authority to deny [an attorney] the privilege of practicing before it."); Peugeot v. Unites States Trustee (*In re* Crayton), 192 B.R. 970 (B.A.P. 9th Cir. 1996); *In re* Moix-McNutt, 220 B.R. 631 (Bankr. W.D. Ark. 1998) (suspending debtor's attorneys for four years in part for filing false and misleading schedules.); *In re* Nesom, 76 B.R. 101 (Bankr.

hundred fifty-five cases and suspended from practice for failing to support the fees, for inaccurate and incomplete disclosures, and for incompetent and inadequate representation.[158] In *In re Brantley*, the court found that the schedules prepared by the debtor's attorney were inaccurate and warned the attorney that if the conduct continued in future cases, the court would recommend a hearing on suspension from practice.[159] Nevertheless, disciplinary actions against bankruptcy attorneys are rare.[160]

G. Legal Malpractice Claims

A debtor who suffers injury from an attorney's improper or inadequate advice in preparing the bankruptcy papers may assert a claim for legal malpractice.[161] However, several legal and practical obstacles explain why this remedy does not address systemic problems with bankruptcy papers. First, a substantial majority of courts have concluded that because the debtor must have known of any problems with the papers before they were filed, the malpractice claim accrued prepetition and is therefore property of the bankruptcy estate under 11 U.S.C. § 541(a)(1).[162] In these circumstances, the trustee is the only proper party to pursue the claim,[163] but may not have the

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N.D. Tex. 1987) (suspending debtor's attorney from practice for sixty days for forging the debtor's signatures on the initial bankruptcy papers).

[158]210 B.R. 727 (Bankr. S.D. Tex. 1996).

[159]84 B.R. 508 (Bankr. S.D. Ohio 1988).

[160]*See* Maggs, *supra* note 127, at 28:

> Disciplinary actions against bankruptcy attorneys, however, seldom occur for two reasons. First, state bars and federal law enforcement agencies have very limited resources. They learn about bankruptcy fraud mostly through referrals and they usually have more serious matters to address. Second, charges against attorneys may be difficult to prove. Merely showing that an attorney gave bad advice does not suffice; the prosecutor also must demonstrate, at a minimum, that the lawyer knew that advice was wrong. It is often difficult to obtain such evidence. (footnotes omitted.)

[161]*See, e.g.*, Wheeler v. Magdovitz (*In re* Wheeler), 137 F.3d 299 (5th Cir. 1998) (the debtor's claim for malpractice allegedly resulting in his bankruptcy fraud conviction accrued prepetition because the debtor should have known that his schedules concealed assets); *In re* Tomaiolo, 205 B.R. 10 (Bankr. D. Mass. 1997) (relying on Segal v. Rochelle, 382 U.S. 375, 86 S. Ct. 511, 15 L. Ed. 2d 428 (1966)); *In re* J.E. Marion, Inc., 199 B.R. 635 (Bankr. S.D. Tex. 1996); Haaland v. Corporate Management, Inc., 172 B.R. 74 (S.D. Cal. 1989); Ellwanger v. Budsberg (*In re* Ellwanger), 140 B.R. 891 (Bankr. W.D. Wash. 1992); Jones v. Hyatt Legal Servs. (*In re* Dow), 132 B.R. 853 (Bankr. S.D. Ohio 1991). *See generally* Barry K. Tagawa, *Collection and Bankruptcy Practice: The Third Highest Area of Malpractice Exposure*, 3 No. 2 Legal Malpractice Rep. at 15 (1992) ("The most common category of errors alleged against collection and bankruptcy attorneys is 'failure to know or properly apply the law.'").

But see, Alvarez v. Johnson, Blakely, Pope, Bokor, Ruppel and Burns, P.A. (*In re* Alvarez), 228 B.R. 762 (Bankr. M.D. Fla. 1998); Swift v. Seidler (*In re* Swift), 198 B.R. 927 (Bankr. W.D. Tex. 1996), *aff'd sub nom.*, State Farm Life Ins. Co. v. Swift, 129 F.3d 792 (5th Cir. 1997); Collins v. Federal Land Bank of Omaha, 421 N.W.2d 136, 139-40 (Iowa 1988).

[162]*See supra* note 161 and cases cited therein.

[163]*Id.*

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resources or motivation to do so.

Second, if, as the majority of courts hold, the debtor who claims malpractice either knew or should have known of any problems with the papers, it would seem that an attempt to fault the attorney for the subsequent consequences may not succeed.[164] This might be especially so when the consequences were imposed based on a judicial finding of the debtor's fraudulent intent, such as would be necessary for a criminal conviction for bankruptcy fraud[165] or denial of the discharge.[166]

Third, the estate's recovery on the debtor's legal malpractice claim may result in a windfall, because the estate may have actually benefitted from the malpractice.[167] The prospect of a windfall might impair the viability of the claim.

Addressing the malpractice remedy for consumer debtors, one bankruptcy judge recently lamented:

> To operate "profitably" in this area, a consumer debtors' lawyer has to do a high volume business. So if a court suspects that a chapter 7 lawyer ineffectively represents a client in one case, that level of poor performance is likely to affect many other clients. The most frustrating aspect of this judicial position is opening case files on a daily basis and discovering clients who are not effectively represented by their lawyers. A bankruptcy court should not adopt an existential posture by wryly or sadly observing: if a chapter 7 debtor suffers from malpractice, then tort remedies are available to that victim. Many chapter 7 debtors, in fact, never discover that their attorneys have committed malpractice.[168]

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[164]"If it is truly the debtor who is attempting to take advantage of the bankruptcy system, then the debtor's chances of recovering against his professionals are slim." Swift v. Seidler (*In re* Swift), 198 B.R. 927, 938 (Bankr. W.D. Tex. 1996).

[165]*See, e.g.*, Wheeler v. Magdovitz (*In re* Wheeler), 137 F.3d 299 (5th Cir 1998); *In re* Tomaiolo, 205 B.R. 10 (Bankr. D. Mass. 1997).

[166]*Swift*, 198 B.R. at 937.

[167]As the court stated in *Swift*, 198 B.R. at 937:

> Assuming for the sake of argument that the Debtor's contentions are meritorious, i.e., that but for the negligence and breaches of the Defendants the debtor would have been able to successfully claim his IRA as exempt and would not have been denied his discharge, then the estate has actually benefitted from the alleged misconduct of the Defendants. Because of the alleged conduct of the Defendants, the IRA, which would otherwise have been the Debtor's exempt property, became property of the estate and subject to the claims of the Debtor's creditors. The Debtor's creditors also benefitted, allegedly because of the Defendants' actions, in that the Debtor remains personally liable to them for the full amount of their claims since his discharge was denied.

[168]*In re* Bruzzese, 214 B.R. 444, 450 (Bankr. E.D.N.Y. 1997).

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H. CRIMINAL REFERRAL AND PROSECUTION

Under 18 U.S.C. § 152,[169] knowingly and fraudulently omitting assets from bankruptcy papers is a crime.[170] When there is reasonable cause to believe that a bankruptcy crime has been committed, 18 U.S.C. § 3057(a) authorizes the bankruptcy judge or the trustee to refer the case to the United States Attorney for investigation and prosecution.[171] The United States

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[169]18 U.S.C. § 152 provides in pertinent part:

> A person who-
>
> . . .
>
> (2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;
>
> (3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;
>
> . . .
>
> shall be fined under this title, imprisoned not more than 5 years, or both.

[170]United States v. Mohamed, 161 F.3d 1132, 1136 (8th Cir. 1998), *cert. denied*, __ U.S. __, 119 S. Ct. 1345, 143 L. Ed. 2d 508, (1999) (the act of concealing assets when filing a bankruptcy petition suffices to warrant a two-level sentencing enhancement for violation of judicial process, due to increased culpability when the defendant conceals assets from bankruptcy court officers and thus hinders the bankruptcy process); United States v. Hernandez, 160 F.3d 661 (11th Cir. 1998); United States v. Holland, 160 F.3d 377 (7th Cir. 1998); United States v. Guthrie, 144 F.3d 1006, 1010 (6th Cir. 1998); United States v. Sheinbaum, 136 F.3d 443 (5th Cir. 1998), *cert. denied*, __ U.S. __, 119 S. Ct. 1808, 143 L. Ed. 2d 1011 (1999); United States v. Shadduck, 112 F.3d 523 (1st Cir. 1997).

See also United States v. Willey, 57 F.3d 1374 (5th Cir.), *cert. denied*, 516 U.S. 1029, 116 S. Ct. 675, 133 L. Ed. 2d 524 (1995); United States v. West, 22 F.3d 586, 589 n.8 (5th Cir.), *cert. denied*, 513 U.S. 1020, 115 S. Ct. 584, 130 L. Ed. 2d 498 (1994); United States v. Hubbard, 16 F.3d 694 (6th Cir. 1994), *rev'd on other grounds*, 514 U.S. 695, 115 S. Ct. 1754, 131 L. Ed. 2d 779 (1995) (the court of appeals upheld convictions under 18 U.S.C. § 152; the Supreme Court reversed other convictions under 18 U.S.C. § 1001); Tamara Ogier & Jack F. Williams, *Bankruptcy Crimes and Bankruptcy Practice*, 6 AM. BANKR. INST. L. REV. 317 (1999); Craig Peyton Gaumer, *Bankruptcy Fraud: Crime And Punishment*, 43 S.D. L. Rev. 527 (1998).

Debtors' attorneys are also subject to prosecution. *See, e.g.*, United States v. Webster, 125 F.3d 1024 (7th Cir. 1997), *cert. denied*, __ U.S. __, 118 S. Ct. 698, 139 L. Ed. 2d 642 (1998); United States v. Dolan, 120 F.3d 856 (8th Cir. 1997); United States v. Smithson, 49 F.3d 138 (5th Cir. 1995); United States v. Edgar, 971 F.2d 89 (8th Cir. 1992); United States v. Brown, 943 F.2d 1246 (10th Cir. 1991); United States v. Zimmerman, 943 F.2d 1204 (10th Cir. 1991).

[171]*See* Seidel v. Durkin (*In re* Goodwin), 194 B.R. 214, 223 (B.A.P. 9th Cir. 1996); *In re* Famisaran, 224 B.R. 886 (Bankr. N.D. Ill. 1998); State Bank of India v. Kaliana (*In re* Kaliana), 207 B.R. 597 (Bankr. N.D. Ill. 1997); *In re* Holder, 207 B.R. 574 (Bankr. M.D. Tenn. 1997); *In re* Lewis, 51 B.R. 353 (Bankr. E.D.N.Y. 1985); Flushing Sav. Bank v. Parr (*In re* Parr), 13 B.R. 1010 (E.D.N.Y. 1981).

18 U.S.C. § 3057 (1985) provides:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

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Trustee has similar authority.[172] Again however, the threat of criminal prosecution is too remote to be effective in addressing the problems disclosed in this study.[173]

These kinds of negative reinforcements were not designed to address the problems of inaccurate and incomplete schedules in consumer cases, nor are they effective for that purpose. Indeed, the results of this paper demonstrate as much. Three reasons appear for this. First, these procedures are designed primarily to address intentional misconduct, rather than carelessness or inadvertence in completing the bankruptcy forms. Second, imposing these consequences on a debtor may be seen as too severe in such circumstances. Third, because the case is most likely a no asset case, the trustee probably does not have the resources in the case to hire counsel to initiate and pursue these remedies in court. Therefore, motivating more careful disclosures will require more creative responses.

VII. SUGGESTING SOME REMEDIES

This part will review some national and local responses that might be considered in addressing the problems revealed in this study, including: (a) revising the official forms and expanding their instructions; (b) creating

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(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

Several cases have concluded "that § 3057 was intended primarily as an administrative measure - a congressional directive to the district offices of the United States Attorneys to become more active in the prosecution of bankruptcy fraud cases." United States v. Filiberti, 353 F. Supp. 252, 253 (D. Conn. 1973) (citing congressional record). *See also* United States v. Laurenti, 581 F.2d 37 (2d Cir. 1978), *cert. denied*, 440 U.S. 958, 99 S. Ct. 1499, 59 L. Ed. 2d 771 (1979); *In re* Valentine, 196 B.R. 386 (Bankr. E.D. Mich. 1996).

See also Maureen A. Tighe, *A Guide to Making a Criminal Bankruptcy Fraud Referral*, 6 AM. BANKR. INST. L. REV. 409 (1999).

[172]28 U.S.C. § 586(a)(3)(F) (1993). *See* Heston, note 135 *supra*. *See also*, United States Department of Justice, LEGAL MANUAL FOR UNITED STATES TRUSTEES, volume 1, pages 91-93 (August 1988).

[173]Indeed, it is not clear that threat of prosecution even deters debtors intent on committing fraud. "In 1996, the Attorney General announced 'Operation Total Disclosure,' which resulted in the prosecution of 127 defendants for their involvement in 111 bankruptcy crimes between December 1995 and February 1996. After the initial fanfare associated with Operation Total Disclosure, the prosecution of bankruptcy crimes has slowed." Ogier & Williams, *supra* note 170, at 325-26 (footnote omitted). "[T]he vast majority of prosecutions occur in cases involving substantial sums of money, particularly egregious behavior, concealments, transfers or misrepresentations by the debtor and/or his attorney." *Id.* at 348. "The lack of prosecution means that there is little motivation for a dishonest debtor to sober up and not attempt to defraud his creditors." *Id.* at 349. "[P]rosecutions under § 152 itself are comparatively infrequent." McCullough, *supra* note 135, at 2. "[It is] incredible that out of nearly 883,457 bankruptcies filed in 1995, only one hundred fifty eight criminal complaints were filed." *Id.* at 41.

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local guidelines for completing the official forms; (c) creating inexpensive and expedited procedures in the bankruptcy court to resolve these issues concerning the completeness of the papers; and (d) creating continuing legal education opportunities for attorneys and paralegals for improving client interview skills and for understanding the legal requirements of the forms.[174]

The suggestions made in this part reflect the judgment that the problems of inadequate disclosure revealed in this study have two primary causes. First, the official forms are in legal language and are ambiguous. Second, debtors and their attorneys are insufficiently motivated to exercise the care necessary to complete the forms. These distinct causes will be discussed with potential remedies for them.

A. The Official Forms

1. *Issues Debtors Face in Completing the Forms*

The results of some of the test questions in this study can be explained, at least in part, by the interpretive issues that debtors and their attorneys face in completing the Official Forms:[175]

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[174]In an effort to address asset disclosure problems in bankruptcy, the Bankruptcy Review Commission recommended, "The Bankruptcy Code should direct trustees to perform random audits of debtors' schedules to verify the accuracy of the information listed." Commission Report, *supra* note 2, § 1.1.2, at 107. In expanding on the concept of audits, the Commission stated, "Information could be verified by the submission of recent to pay stubs, tax returns if available, and other similar documentation. Trustees would report material irregularities to the bankruptcy courts . . . Whether irregularities warrant revocation of discharge or criminal prosecution would be subject to the discretion of the parties and Department of Justice, as under current law." *Id.* at 109.

However, such audits would not address the problems identified in this study. Although auditing may be a useful tool in identifying concealed assets and transfers, and in discouraging fraud, the Commission proposes resolving such problems through the traditional processes and remedies. It offers no new remedies specific to the problems of careless and inadvertent omissions and inconsistencies identified in this study. *See* Gary Klein, *Consumer Bankruptcy in the Balance: The National Bankruptcy Review Commission's Recommendations Tilt Toward Creditors*, 5 Am. Bankr. Inst. L. Rev. 293, 300-301 (1997) ("Audits would supplement Rule 9011, objections to discharge, complaints to determine dischargeability, good faith requirements, Rule 2004 examinations, creditor's meetings, dismissals for substantial abuse, and criminal sanctions as tools to root out fraud." (footnotes omitted)).

[175]Recognizing that the forms require interpretation, one court of appeals attempted to give debtors and their attorneys some guidance:

> It would be silly to require a debtor to itemize every dish and fork, even to list the electric knife separately from the crock pot. The necessary degree of specificity varies with the value of separate listings. The lower the value of the items, the less reason to identify each. But it does not follow that a generic listing always encompasses the low-value items within a category.
>
> . . .
>
> The debtor must furnish enough information to put the trustee on notice of the wisdom of further inquiry. The trustee, who protects the interests of the creditors, then may make a calculation of the benefits of more detailed listing in each case, and he may ask the bankruptcy court to require the debtor to do more.
>
> . . .

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Under what circumstances should a debtor estimate that funds will be available for distribution to creditors?[176]

Should the debtor determine whether the "nature of the debt" is consumer or business based on the preponderance of the number of debts, the preponderance of the amount of the debts or some other test?[177]

Should a debtor disclose all types of insurance, including health, dental, long term care, disability, home, renter, auto and life, or only insurance in which the debtor has some equity, such as whole life or prepaid insurance?[178]

Should a debtor disclose a pension interest even if it would not be property of the estate under 11 U.S.C. § 541(c)?[179]

Should a debtor disclose a month to month lease or other verbal rental arrangement?[180]

What detailed income and expense information should a debtor in business disclose?[181]

Should the debtor sign the schedules and statement of financial affairs within a fixed time, such as 15 days, before they are filed?[182]

Should the debtor disclose payments to secured creditors and on executory contracts, or only to unsecured creditors?[183]

> No bankrupt will itemize every possession; none should. Every bankrupt must do enough itemizing to enable the trustee to determine whether to investigate further[.]

Payne v. Wood, 775 F.2d 202, 205-07 (7th Cir. 1985).

Nevertheless, this standard for disclosing assets is too vague to provide any functional guidance to consumer debtors. Another court suggested an equally vague standard. "There are, however, no bright-line rules for how much itemization and specificity is required. What is required is reasonable particularization under the circumstances." *Mohring*, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992). The instructions on Official Bankruptcy Form 6 simply state, "[L]ist all personal property of the debtor of whatever kind" and, "if additional space is needed in any category, attach a separate sheet[.]"

[176]Official Bankruptcy Form 1, voluntary petition. As noted in the discussion on test question 16, *supra* at 673-74, this is a more acute problem in chapter 13 cases.

[177]*See supra* note 176. *See supra* test question 17, at 674.

[178]Official Bankruptcy Form 6, schedule B, line 9. *See supra* test question 4, at 666. Payne v. Wood, 775 F.2d 202 (7th Cir. 1985).

[179]Official Bankruptcy Form 1, schedule B, line 11. *See supra* test question 5, at 666-67. *See also* the conflicting decisions discussed *supra* note 56.

[180]Official Bankruptcy Form 1, schedule G. *See supra* test question 7, at 668.

[181]Official Bankruptcy Form 1, schedules I and J. *See supra* test question 8, at 668.

[182]Official Bankruptcy Forms 6 and 7. *See supra* test questions 18 and 19, at 675-76.

[183]Official Bankruptcy Form 7, statement of financial affairs, question 3. *See* question and text accompanying note 95.

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In addition to the issues specifically reviewed in this study, many other questions may arise in completing the official forms:

> How should the debtor disclose those matters that change often, or even daily, such as cash on hand and deposits in financial institutions?[184]
>
> How much detail is required in disclosing household goods?[185]
>
> How much detail is required in disclosing wearing apparel?[186]
>
> How much detail is required in disclosing information relating to unsecured creditors regarding the date the claim was incurred and the consideration for the claim, especially when the debt is on a credit card?[187]
>
> How should a debtor estimate current monthly income, especially when the debtor's hours and overtime are uncertain?[188]
>
> Should the debtor's disclosure of property held for another person include property of the minor children in the household?[189]

These are only examples of the issues that debtors and their attorneys face in attempting to respond to the legal requirements of filing bankruptcy. There may well be similar questions of interpretation for every disclosure requirement. Even regarding a matter as simple as prior names used by the debtor,[190] a question can arise about disclosing a prior corporate name that the debtor used. Or, concerning the disclosure of the debtor's social security number, a debtor may face an issue of whether to disclose an incorrect number attributed to the debtor by a creditor.

These and other difficulties with the official forms reviewed below can be addressed both nationally and locally.

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[184]Official Bankruptcy Form 6, schedule B, lines 1 and 2.

[185]Id., schedule B, line 4. *See, e.g.*, Payne v. Wood, 775 F.2d 202 (7th Cir. 1985); *Mohring, supra*, 142 B.R. at 395-96 ("The one thing that is certain about this debtor's lists and schedules is that the generic listing of 'household goods' worth $1,000 is incomplete and ambiguous. There is no description of the household goods; they are merely said to be 'at debtor's residence' and worth $1,000. This does not substantially comply with the requirements of Official Form 6. And it is not adequate to permit the trustee and creditors to determine whether the property is validly exempt.").

[186]Official Bankruptcy Form 1, schedule B, line 6.

[187]Id., schedule F.

[188]Id., schedule I.

[189]Official Bankruptcy Form 7, statement of financial affairs, question 14.

[190]Official Bankruptcy Form 1, voluntary petition.

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2. *National Remedies for the Official Forms*

Substantial consideration ought to be given to a complete overhaul of the Official Forms, for several purposes. First, plain English ought to be the primary goal.[191] Second, a multidisciplinary approach is necessary to assure that the language on the forms maximizes the chances that unsophisticated debtors will understand what is required.[192] Third, the diversity of the experiences and cultures of consumer debtors ought to be given special consideration, along with the potential impact of that diversity upon debtors' ability to meet the bankruptcy disclosure requirements.[193] Fourth, functional and organizational efficiencies within the forms should be incorporated.[194] Finally, the instructions accompanying the official forms should be expanded

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[191]Several definitions have been offered for "plain English" in legal writing. *See, e.g.*, CAL. GOV'T CODE § 11342(e) (West 1995) ("'Plain English' means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English."). Another commentator lists the ten typical elements of plain English: (1) a clear, organized, easy-to-follow outline or table of contents, (2) appropriate captions or headings, (3) reasonably short sentences, (4) active voice, (5) positive form, (6) subject-verb-object sequence, (7) parallel construction, (8) concise words, (9) simple words and (10) precise words. George H. Hathaway, *An Overview of the Plain English Movement for Lawyers*, 62 MICH. B.J. 945, 945 (1983). *See also*, Michael S. Friman, *Plain English Statutes: Long Overdue or Underdone?*, 7 LOY. CONSUMER L. REP. 103 (1995) (reviewing the various statutory approaches to plain English and critiquing the various federal and state attempts to legislate it.); George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 Mich. L. Rev. 333 (1987).

The Advisory Committee on Bankruptcy Rules has begun to address plain English considerations. The 1997 committee notes refer to plain English in connection with amended Form 9 (Notice of Bankruptcy Case, Meeting of Creditors, and Deadlines), amended Form 18 (Discharge of Debtor in a Chapter 7 Case), and new Form 20A (Notice of Motion or Objection). The suggestion here is to expand those considerations to the other forms.

[192]This approach could involve the sciences of linguistics, communication, sociology, psychology and survey research. This effort could also involve the Federal Judicial Center, the statutory purpose of which is "to further the development and adoption of improved judicial administration in the courts of the United States." 28 U.S.C. § 620(a) (1993).

[193]*See* Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to The Law's Marginalization of Outsider Voices*,103 DICK. L. REV. (1998); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. (1992).

[194]Presently, the organization of the official forms must create a struggle both for those who complete them and for those who review them after filing. For example, locating the pertinent information regarding a debtor's vehicle in a chapter 7 case now requires reference to *five* different papers: (1) schedule B for ownership and value, (2) schedule C for exemption, (3) schedule D for the secured debt on the vehicle, (4) the statement of intent regarding the debtor's intent to surrender the vehicle or reaffirm the debt, and (5) schedule J for payment on the debt if it is to be reaffirmed. The first four pieces of data could and should be disclosed in a combined format on a single schedule. Such organizational efficiencies would enhance the likelihood of complete and accurate disclosures, and would make it easier for trustees and creditors to review the information after it is filed.

In the same vein, consideration might be given to creating a national electronic filing form for the required bankruptcy disclosures. This electronic form could be used either for printing paper copies of the official forms or for electronic filing. Functionally, the electronic form could include barriers to the kinds of omissions and inconsistencies found in this study.

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and clarified as necessary.[195]

3. *Local Responses to the Problems with the Official Forms*

On the local level, representatives of all participants in the process, including bankruptcy judges, debtor attorneys, creditor attorneys, trustees and representatives of the United States Trustee's office, can come together to create a set of published guidelines for completing the Official Forms.[196] These guidelines would express local needs and expectations regarding the content and detail of the required disclosures on the bankruptcy papers, line by line as necessary. They would also supplement and clarify the presently inadequate instructions on the official forms.

As part of the process of creating local guidelines, the bar and the court might also consider creating a local client interview form that attorneys could

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[195]In *Payne*, 775 F.2d at 206, the court suggested that clarifying and simplifying the official forms is a national issue, not a local issue:

> [A] court may not announce a specific rule such as: "List separately each item that a trustee might think could be sold for $25 or more." When writing the bankruptcy code Congress had to choose between a specific set of rules, such as a $25 line of demarcation, and a more general standard. The code selects a standard rather than a rule, and a court may not reverse this choice just because the rule seems more easily administrable. The degree of specificity must be left in the charge of those who draft the bankruptcy schedules, and so far they have allowed many items to be lumped together for a single valuation.

[196]It appears that a few bankruptcy courts have adopted local rules establishing limited expectations for completing the official forms. *See* O'Connell v. Mann (*In re* Davila), 210 B.R. 727, 729 n.2 (Bankr. S.D. Tex. 1996) ("The Court notes that at least since 1989 the local rules of the Bankruptcy Courts for the Southern District of Texas have required a debtor's schedules to contain a detailed inventory of the debtor's assets with a separate valuation for each item."); *In re* Reid, 97 B.R. 472, 479 (Bankr. N.D. Ind. 1988) ("For guidance on specificity the parties should refer to the local rules of this court, which provide: 'When property of the debtor is claimed as exempt under applicable law, such property shall be adequately described and itemized in the schedules in the place provided therefore. General terms of description (i.e. 'automobiles,' 'common stock,' etc.) are not sufficiently descriptive.' Rules of the United States Bankruptcy Court for the Northern District of Indiana, Rule B-206[.]").

See also C.D. CAL. LBR 1002-1(c) ("If the petition fails to specify the chapter under which relief is being sought, the case will be deemed to have been filed under chapter 7. If the petition fails to specify whether it is a consumer or business case, it will be presumed to be a consumer case. If the petition fails to indicate the number of creditors or equity holders, or the amount of assets or debts, it will be presumed that the case falls in the smallest category of each."); D. MAINE LBR 4003-1 ("A debtor's claim of exemptions shall be specific and shall, as to each item or category of items claimed as exempt, designate by title, section and subsection, the statutory basis for the claim. Exempt assets need not be inventoried and valued item by item in every case. However, the schedules must disclose the debtor's exemption claims with meaningful particularity and the debtor must be prepared to provide detailed information regarding assets claimed as exempt at the meeting of creditors. In joint cases, exemptions claimed by each debtor shall be listed separately."); D.R.I. LBR 4003-1, (same); D.N.J. LBR 1007-1, ("In addition to the requirements of D.N.J. LBR 1002-1(a) in a joint petition, the assets and liabilities of each debtor shall be separately listed and tabulated on the schedules and statements under appropriately identified columns or entries. Joint assets and liabilities of the debtors shall be listed and tabulated as such, under appropriately identified columns or entries.").

The suggestion in the text is for substantially more extensive guidance.

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use with their clients on an optional basis. Such a local interview form would be designed to carry out the local guidelines and to facilitate accuracy in the completion of the Official Forms.

B. Remedies for The Lack of Care by Debtors and Their Attorneys

1. *The Lack of Care in Completing the Bankruptcy Papers*

The results of a majority of the test questions in this study cannot be attributed to ambiguities in the forms, but rather reflect insufficient care in completing the forms. This is certainly true regarding the results of several of the questions that tested for incomplete and inconsistent disclosures, such as:

> Did the debtor estimate whether assets will be available for distribution to creditors?[197]
> If married, did the debtor state who owns the property?[198]
> If renting, did the debtor disclose a security deposit?[199]
> If a joint petition, did the debtors state who owes the debts?[200]
> If intending to reaffirm debt, did the debtor include the expense for the monthly payments?[201]
> Did the debtor date the papers?[202]
> Did the debtor address all secured creditors in the § 521 statement of intent?[203]
> Did the fee disclosures of the debtor and the attorney agree?[204]

In addition, the study noted other errors that reflect inadequate care.[205]

2. *National Responses to the Lack of Care*

Consideration should be given to creating inexpensive and prompt judicial processes that would be available in these circumstances and that would

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[197]Official Bankruptcy Form 1, voluntary petition. *See supra* note 46 and accompanying question and text.

[198]Official Bankruptcy Form 6, schedules A and B. *See supra* test question 2.

[199]Official Bankruptcy Form 6, schedule B, line 3. *See supra* note 49 and accompanying question and text.

[200]Official Bankruptcy Form 6, schedules D, E and F. *See supra* note 58 and accompanying question and text.

[201]Official Bankruptcy Form 6, schedule J. *See supra* note 68 and accompanying question and text.

[202]Official Bankruptcy Forms 6 and 7, schedules and statement of financial affairs. *See supra* note 70 and accompanying question and text.

[203]Official Bankruptcy Form 8, statement of intent. *See supra* question and text accompanying note 73.

[204]Official Bankruptcy Form 7, statement of financial affairs, question 9; statement required by Fed. R. Bankr. P. 2016(b). *See supra* question and text accompanying note 78.

[205]*See* test questions 15 at p.672 (other fee disclosure errors) and 21 at p.677 (other errors).

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motivate consumer debtors and their attorneys to file complete and accurate bankruptcy papers. One suggestion is a new bankruptcy rule that would give the trustee or the United States Trustee the authority to file, without an attorney, a simple paper identifying the deficiencies in the debtor's papers. The filing of such a paper would then have the effect of placing a hold on the debtor's discharge.[206] This hold could then be released upon an order of the court obtained upon a motion filed by the debtor establishing that the papers have been remedied (or are not in need of remedy.) The court would then grant relief upon such terms as it deems just.

Thus, for example, if it appears to the trustee that the debtor has not disclosed, say, pension or insurance interests, the trustee could file a check-box form pleading identifying those deficiencies. That filing would then signal the court not to issue the discharge. The debtor would then be required to file an amended schedule B, and file either a motion or a stipulation to obtain an order permitting the discharge to be issued. In that process, the court could condition the order upon just terms, such as a reduction in attorney fees under § 329(a), or costs in favor of the trustee against either the debtor or the attorney as appropriate. If the court determines that the trustee's filing violated Bankruptcy Rule 9011, the court could impose sanctions under that rule.

Such a procedure would have several advantages. First, it would be inexpensive and prompt. Second, it would restore meaning to that part of the bankruptcy bargain that states that full disclosure by the debtor is a major condition of the discharge.[207] Third, the availability of such a simple process might strongly motivate the accurate and complete disclosures that the law requires in the first instance. Fourth, because the process could not be invoked by a creditor, it would protect the debtor against creditor harassment.[208]

Another suggestion is to create a specific process for the trustee, the United States Trustee or any party in interest to file a motion to compel the debtor to amend. This rule might further require the imposition of costs in

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[206]In Detroit, one mechanism that trustees occasionally use in these circumstances is to continue the meeting of creditors to give the debtor an opportunity to correct the deficiencies. Reportedly, this can be effective in motivating correction of the problem.

However, trustees are under a mandate from the United States Trustee program to close no asset cases promptly and are evaluated accordingly. HANDBOOK FOR CHAPTER 7 TRUSTEES, *supra* note 135, at 6-14 and 10-1; United States Department of Justice, UNITED STATES TRUSTEE MANUAL, volume 2, page 43-44 (October 1996). As a result of this unfortunate disincentive, a trustee may decide to conclude the reconvened meeting even if the problems with the papers have not been fully remedied.

Obviously, the United States Trustee would have to allow some leeway in this mandate for cases in which the trustee invokes the suggested new process.

[207]*See* Fidelity National Title Ins. Co. v. Franklin (*In re* Franklin), 179 B.R. 913, 927.

[208]This consideration is the basis for the current limitation permitting only the United States Trustee to bring a motion to dismiss for substantial abuse under § 707(b). *See supra* note 122.

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favor of the moving party if the court determines that the debtor's papers are deficient, and in favor of the debtor if the court determines otherwise. Such a process would have advantages similar to the first suggested process.

A final suggestion on the national level is for the United States Trustee program to focus on this issue, to make it a priority and to bring its resources to bear upon it.[209] Such a priority could give the trustee substantial support in dealing with this problem.

3. *Local Responses to the Lack of Care*

The focus of a local response to this problem should be specific educational opportunities for the debtor bar. The agenda for such education might include both a review of the legal requirements for disclosure in the initial papers, as supplemented by the local guidelines, and workshop opportunities to improve client interview skills.[210] These workshops might be modeled after the trial advocacy skills workshops offered to trial lawyers, which include demonstration and mock trial opportunities for the participants.[211] Thus, under supervision and with review by experienced attorneys or others, each participant would interview a mock debtor for the purpose of eliciting the disclosures necessary and required to complete the forms. The participants would then complete the bankruptcy forms for the "debtor," and this work product would be reviewed for accuracy and completeness.

This study demonstrates a disturbing disconnect between the declared law of consumer bankruptcy disclosure and the actual execution of that law in consumer cases. Most fundamentally, this disconnect can affect the administration of bankruptcy cases. Beyond that, it can trap unwary debtors in highly prejudicial ways. Finally, it tends to undermine the confidence of the parties and public in the bankruptcy process. Accordingly, further examination of this issue is warranted and important.

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[209]Presently, neither the HANDBOOK FOR CHAPTER 7 TRUSTEES, *supra* note 135, nor the UNITED STATES TRUSTEE MANUAL, *supra* note 137, provides any guidance to United States Trustees or to chapter 7 trustees in dealing with the problems identified in this study.

[210]*See* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counselling*, 27 GOLDEN GATE L. REV. 345 (1997); Gary S. Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 J. LEGAL EDUC. 5 (1975).

[211]*See* Gilda Tuoni, *Two Models For Trial Advocacy Skills Training in Law Schools - A Critique*, 25 LOY. L.A. L. REV. 111 (1991); Thomas F. Geraghty, *Foreword: Teaching Trial Advocacy in The 90s And Beyond*, 66 NOTRE DAME L. REV. 687 (1991).

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EMPLOYMENT

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Tulane Law School, New Orleans, Louisiana
Associate Professor of Law, July 2003 – June 2006

Willkie Farr & Gallagher LLP, New York, New York
Business Reorganization and Restructuring Associate, August 2002 – February 2003

The Honorable Prudence Carter Beatty, U.S. Bankruptcy Court for the Southern District of New York, New York, New York
Law Clerk, August 2001 – July 2002

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New York University School of Law, New York, New York
J.D., 2001
Executive Editor, *New York University Law Review*
Judge John J. Galgay Fellowship in Bankruptcy and Reorganization Law
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Yale University, New Haven, Connecticut
B.A. in History, 1998
Senior Thesis: *Diverging Religious Approaches to the Role of Faith in Revolution: The Conflict Between the Church Hierarchy and the Progressive Clergy in Nicaragua, 1981-1983*
Lewis P. Curtis Fellowship for Travel
Edgar J. Boell Prize

8/25/2010

PUBLICATIONS

Reconceptualizing Present-Value Analysis in Consumer Bankruptcy, 68 WASH. & LEE L. REV. (forthcoming 2011)

Opinion, *Resolution Oversight*, NAT'L L.J., May 31, 2010, at 34 (with Jonathan R. Nash)

An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors, 26 EMORY BANKR. DEV. J. 5 (2009)

Setting the Record Straight: A Sur-Reply to Professors Lawless et al., 33 SEATTLE U. L. REV. 93 (2009)

Failing to Answer Whether Bankruptcy Reform Failed: A Critique of the First Report from the 2007 Consumer Bankruptcy Project, 83 AM. BANKR. L.J. 27 (2009) (peer-reviewed)

The Real Student-Loan Scandal: Undue Hardship Discharge Litigation, 83 AM. BANKR. L.J. 179 (2009) (peer-reviewed) (with Michelle R. Lacey)

- cited in *In re* Miller, 409 B.R. 299 (Bankr. E.D. Pa. 2009)

The Utility of Opacity in Judicial Selection, 64 N.Y.U. ANN. SURV. AM. L. 633 (2009) (symposium issue)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, 61 VAND. L. REV. 1745 (2008) (with Jonathan R. Nash)

Examining the Perceived Quality of Appellate Review in the Bankruptcy System, NORTON BANKR. L. ADVISER, Aug. 2008, at 1 (with Jonathan R. Nash)

Illness and Inability to Repay: The Role of Debtor Health in the Discharge of Educational Debt, 35 FLA. ST. U. L. REV. 505 (2008)

Eliminating the Judicial Function in Consumer Bankruptcy, 81 AM. BANKR. L.J. 471 (2007) (peer-reviewed)

- cited in *In re* Cox, 393 B.R. 681 (Bankr. W.D. Mo. 2008); *In re* Quigley, 391 B.R. 294 (Bankr. N.D. W. Va. 2008); *In re* Turner, 384 B.R. 537 (Bankr. S.D. Ind. 2008); *In re* Waters, 384 B.R. 432 (Bankr. N.D. W. Va. 2008)

Analyzing Chapter 7 Abuse Dismissal Motions Post-BAPCPA: A Reply on Cortez, AM. BANKR. INST. J., December/January 2007, at 16

- cited in *In re* Henebury, 361 B.R. 595 (Bankr. S.D. Fla. 2007)

Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt, 74 U. CIN. L. REV. 405 (2005) (with Michelle R. Lacey)

- cited in *In re* Cumberworth, 347 B.R. 652 (B.A.P. 8th Cir. 2006); *In re* Woody, 345 B.R. 246 (B.A.P. 10th Cir. 2006); *In re* Greenwood, 349 B.R. 795 (Bankr. D. Ariz. 2006)

On Proof of Preferential Effect, 55 ALA. L. REV. 281 (2004), *reprinted in* 13 J. BANKR. L. & PRAC. 95 (2004)

- cited in *In re* Bankvest Capital Corp., 375 F.3d 51 (1st Cir. 2004)

Comment, *Bankruptcy Court Jurisdiction and Agency Action: Resolving the NextWave of Conflict*, 76 N.Y.U. L. REV. 945 (2001)

Note, *Beyond the Limits of Equity Jurisprudence: No-Fault Equitable Subordination*, 75 N.Y.U. L. REV. 1489 (2000)

AMICUS BRIEF

Brief for Amicus Curiae Professor Rafael I. Pardo in Support of Neither Party, *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010) (No. 08-1134), 2009 WL 2875368

CONGRESSIONAL TESTIMONY

An Undue Hardship? Discharging Educational Debt in Bankruptcy: Hearing Before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary, 111th Congress (September 23, 2009)

SELECT PRESENTATIONS

2009

Reconceptualizing Present-Value Analysis in Consumer Bankruptcy, Faculty Workshop, University of California, Irvine School of Law (December 3, 2009)

Reconceptualizing Present-Value Analysis in Consumer Bankruptcy, Faculty Colloquium, University of Washington School of Law (November 23, 2009)

The Real Student-Loan Scandal: Undue Hardship Discharge Litigation, Seattle Economics Council, Seattle, Washington (October 14, 2009) (inaugural speaker for 2009-2010 season)

Reconceptualizing Present-Value Analysis in Consumer Bankruptcy, Faculty Colloquium, Emory University School of Law (September 9, 2009)

An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors, Harvard-Texas Joint Conference on Commercial Law Realities, University of Texas School of Law (March 28, 2009) (in absentia)

2008

An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors, Research Conference on Access to Civil Justice: Empirical Perspectives, New York University School of Law (November 13, 2008)

The Real Student Loan-Scandal: Undue Hardship Discharge Litigation, Faculty Workshop, Arizona State University, Sandra Day O'Connor College of Law (October 22, 2008)

An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors, Annual Meeting of the Midwestern Law & Economics Association, Northwestern University School of Law (October 4, 2008)

The Real Student Loan-Scandal: Undue Hardship Discharge Litigation, 2008 Washington Bankruptcy Judges Conference, Blaine, Washington (September 19, 2008)

The Real Student Loan-Scandal: Undue Hardship Discharge Litigation, Third Annual Conference on Empirical Legal Studies, Cornell Law School (September 12, 2008) (poster session)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, Annual Fall Symposium of the Ninth Circuit Bankruptcy Appellate Panel, Ashland, Oregon (August 26, 2008) (co-presented with Jonathan R. Nash)

The Real Student Loan-Scandal: Undue Hardship Discharge Litigation, Houston Higher Education Finance Roundtable, University of Houston Law Center (May 19, 2008)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, Annual Meeting of the American Law and Economics Association, Columbia Law School (May 16, 2008)

The Utility of Opacity in Judicial Selection, NYU Annual Survey of American Law Symposium, *Tradeoffs of Candor: Does Judicial Transparency Erode Legitimacy?*, NYU School of Law (March 11, 2008)

2007

The Real Student Loan-Scandal: Undue Hardship Discharge Litigation, Annual Meeting of the Midwestern Law & Economics Association, University of Minnesota School of Law (October 13, 2007)

The Real Student Loan-Scandal: Undue Hardship Discharge Litigation, Federal Judicial Center Workshop for Bankruptcy Judges II, Austin, Texas (September 17 & 18, 2007)

Illness and Inability to Repay: The Role of Debtor Health in the Discharge of Educational Debt, Federal Judicial Center Workshop for Bankruptcy Judges II, Austin, Texas (September 17 & 18, 2007)

Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt, Federal Judicial Center Workshop for Bankruptcy Judges II, Austin, Texas (September 17 & 18, 2007)

Eliminating the Judicial Function in Consumer Bankruptcy, National Bankruptcy Administrators Conference, Asheville, North Carolina (July 31, 2007) (keynote address)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, Joint Annual Meetings of the Law and Society Association and Research Committee on Sociology of Law, Humboldt University (July 28, 2007) (co-presented with Jonathan R. Nash)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, Stanford/Yale Junior Faculty Forum, Stanford Law School (May 18, 2007) (co-presented with Jonathan R. Nash)

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, Reenvisioning Law Colloquium, University of Houston Law Center (January 26, 2007)

2006

An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review, Annual Meeting of the Midwestern Law & Economics Association, University of Kansas School of Law (October 20, 2006) (co-presented with Jonathan R. Nash)

2005

Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt, Faculty Workshop, St. John's University School of Law (October 26, 2005)

Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt, Faculty Workshop, Seattle University School of Law (October 10, 2005)

Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt, Young Scholars Workshop, Annual Meeting of the Southeastern Association of Law Schools, Hilton Head Island, South Carolina (July 17, 2005)

Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt, Tulane-Loyola Junior Faculty Workshop, Tulane Law School (March 18, 2005)

MEDIA COMMENTARY

Diane Davis & Eilcen J. Williams, *Supreme Court Says Ch. 7 Trustee Is Not Required to Object to Ambiguous Exemption*, 22 Bankr. L. Rep. (BNA) 855, 856 (June 24, 2010).

Diane Davis & Bernard J. Pazanowski, *Supreme Court Approves Forward-Looking Test to Calculate "Projected Disposable Income,"* 22 Bankr. L. Rep. (BNA) 781, 781 (June 10, 2010).

Ross Reynolds, *The Conversation: Trade School in Tough Times: Is It Worth It?*, KUOW Puget Sound Public Radio, Mar. 25, 2010.

Diane Davis, *Bankruptcy Attorneys Consider Impact of* Espinosa *Decision on Practitioners*, 22 Bankr. L. Rep. (BNA) 395, 401 (Mar. 25, 2010).

Peter S. Goodman, *In Hard Times, Lured into Trade School and Debt*, N.Y. TIMES, Mar. 14, 2010, at A1.

Thomas G. Dolan, *Does the Repaying of Private Student Loans Represent Undue Hardship?*, HISP. OUTLOOK HIGHER EDUC., Feb. 8, 2010, at 20.

Eric Kelderman, *Supreme Court Considers Case About Excusing Student Debt Through Bankruptcy*, CHRON. HIGHER EDUC., Nov. 29, 2009.

Christine Dugas, *Student Loans Are Crushing New Grads; Without Jobs, Paying Off $100,000 in Debt Is Tough*, USA TODAY, May 13, 2009, at 6A.

Bill Virgin, *Beware the Latest 'C Level' Executive*, SEATTLE POST-INTELLIGENCER, Oct. 28, 2008, at D1.

Vesna Jaksic, *Your Attendance Is Required*, NAT'L L.J., Sept. 24, 2007, at 4.

COURSES TAUGHT

Bankruptcy, Contracts, Payment Systems, Sales, Secured Transactions, Trusts and Estates, Legal Scholarship Colloquium

LAW SCHOOL SERVICE

Faculty Liaison, Fair Debt Collection Observation Project, Seattle University School of Law, September 2009 – January 2010

Member, Planning Committee for *State Judicial Independence—A National Concern*, Seattle University School of Law, April 2009 – September 2009

Member, Faculty Appointments Committee, Seattle University School of Law, July 2008 – May 2009

Chair, Special Faculty Appointments Committee, Seattle University School of Law, January 2008 – May 2008

Chair, Commercial Law Focus Area, Seattle University School of Law, July 2006 – May 2010

Member, Curriculum Committee, Seattle University School of Law, July 2006 – July 2007

Member, Legal Research and Writing Committee, Tulane Law School, July 2005 – July 2006

Member, Readmissions Committee, Tulane Law School, July 2005 – July 2006

Faculty Liaison, Honor Board, Tulane Law School, March 2005 – July 2006

Member, Special Clinical Appointments Committee for the Tulane Environmental Law Clinic, Tulane Law School, July 2004 – July 2005

Member, Faculty Appointments Committee, Tulane Law School, July 2004 – July 2005

Advisor, La Alianza del Derecho, Tulane Law School, September 2003 – July 2006

Member, Judicial Clerkship Committee, Tulane Law School, July 2003 – July 2004

PROFESSIONAL ACTIVITIES

Member, AALS Committee on Research, August 2010 - present

Panelist, American Bankruptcy Institute Media Teleconference on *United Student Aid Funds v. Espinosa*, No. 08-1134 (U.S. Mar. 23, 2010), March 2010, http://www.abiworld.org/webinars/2010/Espinosa_Supreme_Court/index.html

Academic Member, Editorial Advisory Board, *American Bankruptcy Law Journal*, January 2010 – present

Chair-Elect, AALS Section on Creditors' and Debtors' Rights, January 2010 – present

Volunteer Attorney, King County Bar Association Debt Clinic, April 2009 – present

Secretary and Treasurer, AALS Section on Creditors' and Debtors' Rights, January 2009 – January 2010

Presenter, Washington Bankruptcy Judges Conference, Blaine, WA, September 2008

Panel Moderator, Third Annual Conference on Empirical Legal Studies, Cornell Law School, September 2008

Presenter, Annual Fall Symposium of the Ninth Circuit Bankruptcy Appellate Panel, Ashland, OR, August 2008

Discussant, "Microinitiatives," Globalization & Justice: Interdisciplinary Dialogues, Seattle University, February 2008

Program Faculty, Federal Judicial Center, Workshop for Bankruptcy Judges II, Austin, TX, September 2007

Program Faculty, Federal Judicial Center and Administrative Office of the U.S. Courts, National Bankruptcy Administrators Conference, Asheville, NC, July 2007

Newsletter Editor, AALS Section on Creditors' and Debtors' Rights, January 2007 – May 2008

Member, Board of Directors, Consumer Education and Training Services ("CENTS"), Seattle, WA, October 2006 – present

Guest Blogger, *Concurring Opinions*, http://www.concurringopinions.com, August 2006

Program Faculty, Thirtieth Annual Seminar on Bankruptcy Law and Practice, Stetson University College of Law, December 2005

Member, Southeastern Association of Law Schools (SEALS) Young Scholars Committee, April 2005 – September 2005

Consultant, New Orleans Legal Assistance Corporation, New Orleans, LA, September 2004 – September 2005

Advisory Board, Bankruptcy Litigation Skills Symposium, American Bankruptcy Institute/Tulane Law School, April 2004 – May 2005

AWARDS AND PROFESSIONAL ORGANIZATIONS

Institute for Higher Education Law and Governance Fellow, Houston Higher Education Finance Roundtable, University of Houston Law Center, May 2008

American Bankruptcy Law Journal Fellow, Annual Meeting of the National Conference of Bankruptcy Judges, November 2005

Member, Bar of the United States Supreme Court, 2009 – present

Member, Society of Empirical Legal Studies, 2007 – present

Member, American Bankruptcy Institute, 2003 – present

Member, Washington State Bar Association, 2002 – present

PERSONAL

Born: Havre, Montana

Languages: Spanish (fluent) and French (proficient)

Interests: classical piano, mountaineering, squash

GOLDBERG KOHN ATTORNEYS AT LAW

Practice Areas

- Bankruptcy & Creditors' Rights
- Creditors' Rights
- Debtor Representations
- Equity Committees

Industry Focus

- Automotive Industry
- Banking & Financial Services

News

- Goldberg Kohn Principals Recognized in 2010 *Chambers USA: America's Leading Lawyers for Business*
- Goldberg Kohn Recognized as a Leading Law Firm by Chambers USA
- Goldberg Kohn Secures Major Victory for Beneficiaries of $440 Million Settlement
- Judge Confirms Bankruptcy Reorganization Plan for Goldberg Kohn Client
- Principal Ronald Barliant Presides Over Chapter 11 Bankruptcy Mediation
- Goldberg Kohn Represents Home Products International in Bankruptcy Reorganization Cases
- Bankrupt Network Carriers Treating Regionals Differently
- Bankruptcy Attorneys Cleaning Up
- Delta Ok'd to Pay Some Bills
- Who You Gonna Call?
- American College of Bankruptcy's 15th Class Includes Goldberg Kohn Principal
- Chicago Bankruptcy Judge Ronald Barliant to Join Goldberg Kohn

Events

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Since joining Goldberg Kohn in September 2002 as a principal in the Bankruptcy & Creditors' Rights Group, Ronald Barliant has represented debtors and creditors in complex bankruptcy cases. As head of the firm's "burgeoning practice in debtor work,"[1] his debtor representations include a machine tool manufacturing company in a Delaware chapter 11 case involving significant environmental and mass tort liabilities (plan confirmed with future claimants trust 11 months after filing), a wireless telecommunications carrier in a chapter 11 case requiring the restructuring of debts owed the FCC for PCS licenses (plan confirmed 5 months after filing), and a home products manufacturing company in a pre-negotiated chapter 11 case involving a debt-for-equity swap and the issuance of new debt securities (plan confirmed 75 days after filing).

His creditor representations include the indenture trustee for most of the aircraft operated by United Airlines; the prepetition secured lenders and debtor in possession lenders in the chapter 11 cases of a large manufacturing company; a foundry and a food distributor, the secured creditor resisting substantive consolidation in the Delaware case of a sub-prime lender; and claimants in asbestos-related chapter 11 cases.

Mr. Barliant has also argued several appeals and counseled major financial firms in connection with distressed investments, and both debtors and creditors in connection with workouts. In addition, he has mediated disputes in over a dozen cases, including Delphi Corporation, U.S. Energy Biogas, HALO, Altheimer & Gray and Fleming Foods. He has also been engaged as a consultant by other law firms representing clients in bankruptcy cases, and as an expert witness. In addition, he is an estate representative in the Global Crossing case and was a director of a Delaware debtor in the automotive industry.

Before joining Goldberg Kohn, Mr. Barliant served as a United States bankruptcy judge for the Northern District of Illinois from 1988 to 2002. During his tenure on the bench, one of the largest cases over which he presided was Comdisco Inc. (in the technology services industry), involving more than $4 billion in debt. Other prominent cases he heard include Florsheim Group Inc. (men's shoes); Birmingham Steel Corp. (specialty steel); Archibald Candy Corp. (confectionaries under Fanny May and Fanny Farmer brands); e-spire Communications Inc. (telecommunications); Ben Franklin Retail Stores (retail); Keck, Mahin & Cate (law firm); Forty-Eight Insulations Inc. (asbestos

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PORT Exhibit 1098

Principal Ronald Barliant Speaks at 2010 Central States Bankruptcy Workshop

Principals Ronald Barliant, [redacted] Share Insights in CLE Seminar on Bankruptcy Issues and Subordinated Shareholder Claims

Principal Ronald Barliant to Speak at CBA Bankruptcy & Reorganization Meeting

Principal Ronald Barliant Participates in ABA Teleconference on Workouts

Principals Ronald Barliant and Jon Cooper Speak at AIRA Chicago Regional Conference

Principal Ronald Barliant Speaks at the Law Bulletin 2008 Real Estate Law Conference

Principal Randall Klein and Principal Ronald Barliant Participated in TMA Forum

Ronald Barliant speaks at TMA 2005 Annual Convention

The Uncertain Fate of Intellectual Property in Bankruptcy Cases

Strategies and Opportunities for Lenders in a Bankruptcy or Restructuring

Case Management Procedures: A Comparison of Delaware and Other Jurisdictions

products); Outboard Marine Corp. (boat engines); and the developers in several significant single-asset real estate cases. Before ascending to the bench, he represented the trustee in the chapter 7 case of the owner and operator of an oil refinery, Energy Cooperative Inc., which at the time was the largest chapter 7 case in the history of the Northern District of Illinois.

Mr. Barliant is a Fellow in the American College of Bankruptcy. He has taught debtor-creditor relations at John Marshall Law School and has frequently lectured and participated in panel discussions on bankruptcy-related topics at the invitation of many organizations, including the Federal Judicial Center, the National Conference of Bankruptcy Judges (NCBJ), the American Bankruptcy Institute (ABI), the American Bar Association (ABA), the Commercial Finance Association, the Turnaround Management Association, the Chicago Bar Association (CBA) and LexisNexis Mealey's. Mr. Barliant was a panelist for "Claims Trading: Implications for the Chapter 11 Process, Pitfalls for the Claims Trader," The National Conference of Bankruptcy Judges, 2008; "Do You Remember Lender Liability?," The Distressed Debt Conference, 2008; and "Valuation in the Context of Bankruptcy," 57th Annual Meeting of the Seventh Circuit Bar Association and Judicial Conference of the Seventh Circuit, 2008.

His published writings include articles on chapter 11 plans, executory contracts, preferences, and the anti-trust litigation in the United Airlines case (in which he represented an indenture trustee/defendant). He also co-authored an article featured in the American Bankruptcy Institute Law Review, "From Free-Fall to Free-For-All: The Rise of Pre-Packaged Asbestos Bankruptcies (Winter 2004). He was a member of the board of governors of the NCBJ from 1998 to 2000 and of the NCBJ's Endowment for Education from 1997 to 1998. In addition, he served on national judicial committees and on working groups considering technology issues and the treatment of mass torts in bankruptcy cases. Mr. Barliant is listed in The Best Lawyers in America and Illinois Super Lawyers, as well as Chambers USA: America's Leading Lawyers for Business. He is currently a member of the ABI (Business Reorganization Committee), ABA (Business Law Section), and NCBJ (Former Judges Section). He is also Chair of the Bankruptcy and Reorganization Committee of the CBA.

Mr. Barliant is admitted to practice in Illinois. He received his law degree in 1969 from Stanford University School of Law, where he was a member of the editorial board of the Stanford Law Review. He received his B.A. in 1966 from Roosevelt University.

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[1] *Chambers USA: America's Leading Lawyers for Business 2006*, p. 773.

PROFESSIONAL ACTIVITIES

- American Bankruptcy Institute, Member, Business Reorganization Committee
- American Bar Association, Member, Business Law Section
- National Conference of Bankruptcy Judges, Member, Former Judges Section
- Chicago Bar Association, Chair, Bankruptcy and Reorganization Committee

EDUCATION

- Stanford University, J.D., 1969
- Roosevelt University, B.A., 1966

BAR ADMISSIONS

- Illinois

ARTICLES

- Bad Medicine: Cram Down, Section 1111(B)(2) Elections and Federal Regulations
- Principal Ronald Barliant quoted in The Deal
- United's Long Journey into the Far Reaches of Section 1110 - November/December 2005
- From Free-Fall to Free-For-All: The Rise of Pre-Packaged Asbestos Bankruptcies
- Scope of a Lessee's Power to Reject Parts of Multiple-Unit Leases

VIEW MORE INFORMATION ON THIS ATTORNEY

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(Official Form 1) (9/97)

FORM B1

United States Bankruptcy Court
Eastern District of Louisiana

Voluntary Petition

FILED 2001 MAR 28 P 2:46 CLERK

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse)(Last, First, Middle):
Ortous, G. T.	**Ortous, C. A.**
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all): **436-64-1366**	Soc. Sec./Tax I.D. No. (if more than one, state all): **434-78-3992**
Street Address of Debtor (No. & Street, City, State & Zip Code): **P.O. Box 1723 Harvey, LA 70059-1723**	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): **P.O. Box 1723 Harvey, LA 70059-1723**
County of Residence or of the Principal Place of Business: **Jefferson Parish**	County of Residence or of the Principal Place of Business: **Jefferson Parish**
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	01-12363

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

☑ Individual(s) ☐ Railroad
☐ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other _____

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

☐ Chapter 7 ☐ Chapter 11 ☑ Chapter 13
☐ Chapter 9 ☐ Chapter 12
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

☑ Consumer/Non-Business ☐ Business

Filing Fee (Check one box)

☑ Full Filing Fee Attached
☐ Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

☑ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	☐	☐	☐	☐	☐	☐

Estimated Assets	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☐

Estimated Debts	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☐

DEF01914

PORT Exhibit 1100 (b)

(Official Form 1) (9/97)

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s): G. T. Ortous C. A. Ortous	FORM B1, Page 2

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed: NONE	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor: NONE	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

3-28-01
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X Not Applicable
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Claude C. Lightfoot, Jr., LA 17989
Printed Name of Attorney for Debtor(s) / Bar No.

Claude C. Lightfoot, Jr. P.C.
Firm Name

3500 N. Causeway Blvd. Suite 450
Address

Metairie, LA 70002

(504) 838-8571 (fax) (504) 838-857
Telephone Number

3-28-01
Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Not Applicable
Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X Not Applicable
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10Kand 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____ 3-28-01
Signature of Attorney for Debtor(s) Date

United States Bankruptcy Court
Eastern District of Louisiana
NOTICE TO INDIVIDUAL CONSUMER DEBTOR

The purpose of this notice is to acquaint you with the four chapters of the Federal Bankruptcy Code under which you may file a bankruptcy petition. The bankruptcy law is complicated and not easily described. Therefore, you should seek the advice of an attorney to learn of your rights and responsibilities under the law should you decide to file a petition with the court. Court employees are prohibited from giving you legal advice.

Chapter 7: Liquidation ($155.00 filing fee plus $30.00 administrative fee plus $15.00 trustee surcharge)

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts.
2. Under chapter 7 a trustee takes possession of all your property. You may claim certain of your property as exempt under governing law. The trustee then liquidates the property and uses the proceeds to pay your creditors according to priorities of the Bankruptcy Code.
3. The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed the certain kinds of improper conduct described in the Bankruptcy Code, your discharge may be denied by the court, and the purpose for which you filed bankruptcy petition will be defeated.
4. Even if you receive a discharge, there are some debts that are not discharged under the law. Therefore, you may still be responsible for such debts as certain taxes and student loans, alimony and support payments, criminal restitution, and debts for death or personal injury caused by driving while intoxicated from alcohol or drugs.
5. Under certain circumstances you may keep property that you have purchased subject to a valid security interest. Your attorney can explain the options that are available to you.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income ($155.00 filing fee plus $30.00 administrative fee)

1. Chapter 13 is designed for individuals with regular income who are temporarily unable to pay their debts but would like to pay them in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.
2. Under chapter 13 you must file a plan with the court to repay your creditors all or part of the money that you owe them, using your future earnings. Usually, the period allowed by the court to repay your debts is three years, but no more than five years. Your plan must be approved by the court before it can take effect.
3. Under chapter 13, unlike chapter 7, you may keep all your property, both exempt and non-exempt, as long as you continue to make payments under the plan.
4. After completion of payments under your plan, your debts are discharged except alimony and support payments, student loans, certain debts including criminal fines and restitution and debts for death or personal injury caused by driving while intoxicated from alcohol or drugs, and long term secured obligations.

Chapter 11: Reorganization ($800.00 filing fee)

Chapter 11 is designed primarily for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

Chapter 12: Family Farmer ($200.00 filing fee)

Chapter 12 is designed to permit family farmers to repay their debts over a period of time from future earnings and is in many ways similar to a chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family owned farm.

I, the debtor, affirm that I have read this notice.

3-29-01 — G. T. Ortous, Debtor — Case Number

3-29-01 — C. A. Ortous, Joint Debtor

Date — Date

American Express Centurion Bank
Suite 0002
Chicago, IL 60679-0002

Bank of Louisiana Mastercard
P.O. Box 6972
Metairie, LA 70009-6972

Bank One
P.O. Box 32490
Louisville, KY 40232

First USA Bank, N.A.
First USA Bank, N.A.
P.O. Box 8864
Wilmington, DE 19899-8864

Chase Platinum Mastercard
P.O. Box 52050
Phoenix, AZ 85072-2050

Citibank Advantage
P.O. Box 6408
The Lakes, NV 88901-6408

Citibank Advantage
P.O. Box 6000
The Lakes, NV 89163-6000

Citibank USA
P.O. Box 15109
Wilmington, DE 19850-5109

Citifinancial
P.O. Box 17127
Baltimore, MD 21297

Dillards
P.O. Box 52079
Phoenix, AZ 85072-2079

Dillard's
P. O. Box 52067
Phoenix, AZ 85072

Discover Platinum
P.O. Box 6011
Dover, DE 19903-6011

Edward F. Bukaty, III
One Galleria Blvd.
Suite 1810
Metairie, LA 70001-2082

Fidelity Homestead Association
222 Baronne Street
New Orleans, LA 70112

First USA Bank
P.O. Box 94014
Palatine, IL 60094-4014

J.C. Pennny
P.O. Box 27570
Albuquerque, NM 87125

Jules A. Fontana, III
Fontana & Fontana, L.L.C.
1022 Loyola Avenue
New Orleans, LA 70113

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15019
Wilmington, DE 19886-5019

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

Regions Bank
301 St. Charles Avenue
New Orleans, LA 70130

Chrysler Credit Corporaiton
P. O. Box 7000
Covington, LA 70434

(Official Form 1) (9/97)

01-12363 Section "A"

FORM B1

United States Bankruptcy Court
Eastern District of Louisiana

Voluntary Petition
Amended

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse)(Last, First, Middle):
Porteous, Jr., Gabriel T.	**Porteous, Carmella A.**
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all): **436-64-1366**	Soc. Sec./Tax I.D. No. (if more than one, state all): **434-78-3992**
Street Address of Debtor (No. & Street, City, State & Zip Code): **4801 Neyrey Drive Metairie, LA 70002**	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): **4801 Neyrey Drive Metairie, LA 70002**
County of Residence or of the Principal Place of Business: **Jefferson Parish**	County of Residence or of the Principal Place of Business: **Jefferson Parish**
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

☑ Individual(s) ☐ Railroad
☐ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other _____

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

☐ Chapter 7 ☐ Chapter 11 ☑ Chapter 13
☐ Chapter 9 ☐ Chapter 12
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

☑ Consumer/Non-Business ☐ Business

Filing Fee (Check one box)

☑ Full Filing Fee Attached
☐ Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

☑ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	☐	☑	☐	☐	☐	☐

Estimated Assets	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☑	☐	☐	☐	☐	☐

Estimated Debts	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☑	☐	☐	☐	☐	☐

pz

DEF01919

PORT Exhibit 1100 (c)

(Official Form 1) (9/97)

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s): **Gabriel T. Porteous, Jr.** **Carmella A. Porteous**	FORM B1, Page 2

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed: **NONE**	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor: **NONE**	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (If not represented by attorney)

4-9-01
Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Claude C. Lightfoot, Jr., LA 17989
Printed Name of Attorney for Debtor(s) / Bar No.

Claude C. Lightfoot, Jr. P.C.
Firm Name

3500 N. Causeway Blvd. Suite 450
Address

Metairie, LA 70002

(504) 838-8571 (fax) (504) 838-8572
Telephone Number

4-9-01
Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10Kand 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____ 4-9-01
Signature of Attorney for Debtor(s) Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X **Not Applicable**
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Not Applicable
Printed Name of Bankruptcy Petition Preparer

_____
Social Security Number

_____
Address

_____
Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X **Not Applicable**
Signature of Bankruptcy Petition Preparer

_____
Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF	CASE NUMBER
Gabriel T. Porteous, Jr. **Carmella A. Porteous**	**01-12363** **Section "A"**
DEBTORS	CHAPTER 13

CHAPTER 13 SCHEDULES AND PLAN

Respectfully submitted,

CLAUDE C. LIGHTFOOT, JR., P.C.

Claude C. Lightfoot, Jr. (17989)
3500 N. Causeway Blvd.
Suite 450
Metairie, LA 70002
PH: (504) 838-8571
Attorney for Debtors

P-3

Form B6
(6/90)

United States Bankruptcy Court
Eastern District of Louisiana

In re **Gabriel T. Porteous, Jr.** **Carmella A. Porteous** Case No. **01-12363 Section "A"**
Chapter **13**

SUMMARY OF SCHEDULES

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED ASSETS	LIABILITIES	OTHER
A - Real Property	YES	1	$ 235,110.00		
B - Personal Property	YES	3	$ 28,050.27		
C - Property Claimed as Exempt	YES	1			
D - Creditors Holding Secured Claims	YES	1		$ 158,278.13	
E - Creditors Holding Unsecured Priority Claims	YES	2		$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims	YES	4		$ 196,246.73	
G - Executory Contracts and Unexpired Leases	YES	1			
H - Codebtors	YES	1			
I - Current Income of Individual Debtor(s)	YES	1			$ 7,531.52
J - Current Expenditures of Individual Debtor(s)	YES	1			$ 6,580.00
Total Number of sheets in ALL Schedules ➤		16			
		Total Assets ➤	$ 263,160.27		
			Total Liabilities ➤	$ 354,524.86	

FORM B6A
(6/90)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE A - REAL PROPERTY

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Family Home 4801 Neyrey Drive Metairie, LA 70002	Community Property	C	$ 235,110.00	$ 158,278.13
	Total ➤		$ 235,110.00	

(Report also on Summary of Schedules.)

PROPERTY VALUATION ANALYSIS

Value of Property	$ 266,000.00
1st Mortgage Balance	113,279.54
2nd Mortgage Balance	44,998.59
Homestead Exemption	25,000.00
Real Estate Commission (6% on 1st 100k, 4% on bal.):	- 12,640.00

Sales Price:	$ 266,000.00
Less Real Estate Commission:	- 12,640.00
Less Closing Costs:	- 1,000.00
Less 1st Mortgage	- 113,279.54
Less 2nd Mortgage	- 44,998.59
Homestead Exemption	- 25,000.00
Trustee's Commission (25% on 1st $5k; 10% on bal. Up to $50K, 5% on bal. Up to $1M; 3 % over $1M)	- 16,250.00
Total Equity for Estate	**$ 51,831.87**

FORM B6B
(10/89)

In re Gabriel T. Porteous, Jr. Carmella A. Porteous, Debtor Case No. 01-12363 Section "A" (If known)

SCHEDULE B - PERSONAL PROPERTY

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Bank One Checking Account No. 002379554	C	100.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Household Goods and Furnishings	C	15,000.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		Family Photos, Prints, etc.	C	250.00
6. Wearing apparel.		Wearing Apparel	C	3,000.00
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.		One Rifle	H	200.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Federal Judicial Pension (unvested)	H	NO CASH VALUE
		Fidelity Investments IRA	C	9,500.27
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			

FORM B6B
(10/89)

In re Gabriel T. Porteous, Jr. Carmella A. Porteous, Debtor Case No. 01-12363 Section "A" (If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
14. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15. Accounts receivable.	X			
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		2000 Jeep Cherokee (Lease)	C	NO CASH VALUE
		2000 Jeep Cherokee (Lease)	C	NO CASH VALUE
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment and supplies used in business.	X			

FORM B6B
(10/89)

In re Gabriel T. Porteous, Jr. Carmella A. Porteous, Debtor Case No. 01-12363 Section "A" (If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed. Itemize.	X			
		2 continuation sheets attached	Total ▸	$ 28,050.27

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

FORM B6C
(6/90)

In re Gabriel T. Porteous, Jr. Carmella A. Porteous, Case No. 01-12363 Section "A"
Debtor. (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

☐ 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**

☑ 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
Family Home 4801 Neyrey Drive Metairie, LA 70002	La. RS 20:1, Const. Art. 12, § 9	25,000.00	235,110.00
Family Photos, Prints, etc.	La. RS 13:3881(A)(4)(a)	250.00	250.00
Federal Judicial Pension (unvested)	U.S.C. 28 § 376	NO CASH VALUE	NO CASH VALUE
Fidelity Investments IRA	La. RS 20:33(1)	9,500.27	9,500.27
Household Goods and Furnishings	La. RS 13:3881(A)(4)(a)	15,000.00	15,000.00
One Rifle	La. RS 13:3881(A)(4)(a)	200.00	200.00
Wearing Apparel	La. RS 13:3881(A)(4)(a)	3,000.00	3,000.00

FORM B6D
(6/90)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12363 Section "A"

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 552000340000203579 Bank One P.O. Box 32490 Louisville, KY 40232		C	Second Mortgage Family Home 4801 Neyrey Drive Metairie, LA 70002 VALUE $235,110.00				44,998.59	0.00
ACCOUNT NO. 9938700 Chrysler Credit Corporaiton P. O. Box 7000 Covington, LA 70434		C	2000 Lease 2000 Jeep Cherokee (Lease) VALUE: NO CASH VALUE				0.00	N/A
ACCOUNT NO. 9938609 Chrysler Credit Corporaiton P. O. Box 7000 Covington, LA 70434		C	2000 Lease 2000 Jeep Cherokee (Lease) VALUE: NO CASH VALUE				0.00	N/A
ACCOUNT NO. 2007372850 Fidelity Homestead Association 222 Baronne Street New Orleans, LA 70112		C	First Mortgage Family Home 4801 Neyrey Drive Metairie, LA 70002 VALUE $235,110.00				113,279.54	0.00

0 Continuation sheets attached

Subtotal (Total of this page)	$158,278.13
Total (Use only on last page)	$158,278.13

(Report total also on Summary of Schedules)

B6E
(Rev.4/98)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

☑ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,300* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,300* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to $1,950* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Other Priority Debts**

* Amounts are subject to adjustment on April 1, 2001, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

1 Continuation sheets attached

FORM B6E - Cont.
(10/89)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	TOTAL AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
ACCOUNT NO.								

Sheet no. 1 of 1 sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal (Total of this page) ▶	$0.00
Total (Use only on last page of the completed Schedule E.) ▶	$0.00

(Report total also on Summary of Schedules)

FORM B6F (Official Form 6F) - (9/97)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous . Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 373755583692007 American Express Centurion Bank Suite 0002 Chicago, IL 60679-0002		C	1997-2000 Credit Card				11,855.57
ACCOUNT NO. 5379000017022890 Bank of Louisiana Mastercard P.O. Box 6972 Metairie, LA 70009-6972 Jules A. Fontana, III Fontana & Fontana, L.L.C. 1022 Loyola Avenue New Orleans, LA 70113		C	1997-2000 Credit Card				1,724.23
ACCOUNT NO. 5491041170025091 Chase Platinum Mastercard P.O. Box 52050 Phoenix, AZ 85072-2050		C	1997-2000 Credit Card				10,196.82
ACCOUNT NO. 4128003275980426 Citibank Advantage P.O. Box 6408 The Lakes, NV 88901-6408		C	1997-2000 Credit Card				23,987.39
ACCOUNT NO. 4128003803329138 Citibank Advantage P.O. Box 8000 The Lakes, NV 89163-8000		C	1997-2000 Credit Card				20,719.58

3 Continuation sheets attached

Subtotal ➤ $68,483.59

Total ➤

FORM B6F - Cont.
(10/89)

In re: Gabriel T. Porteous, Jr. (Debtor) Carmella A. Porteous , Case No. 01-12363 Section "A" (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 5308951220000642 Citibank USA P.O. Box 15109 Wilmington, DE 19850-5109 Citifinancial P.O. Box 17127 Baltimore, MD 21297 Edward F. Bukaty, III One Galleria Blvd. Suite 1810 Metairie, LA 70001-2082		C	1997-2000 Credit Card				17,711.35
ACCOUNT NO. 7575000220805428 Dillards P.O. Box 52079 Phoenix, AZ 85072-2079		C	1997-2000 Credit Card				4,673.92
ACCOUNT NO. 7575000220569818 Dillard's P. O. Box 52067 Phoenix, AZ 85072		C	2000 Credit Card				243.14
ACCOUNT NO. 6011006350659489 Discover Platinum P.O. Box 6011 Dover, DE 19903-6011		C	1997-2000 Credit Card				20,783.26

Sheet no. 1 of 3 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) > $43,411.67

Total (Use only on last page of the completed Schedule F.) >

FORM B6F - Cont.
(10/89)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 4417125082148333 First USA Bank P.O. Box 94014 Palatine, IL 60094-4014		C	1997-2000 Credit Card				6,046.24
ACCOUNT NO. 4731616375294833 First USA Bank, N.A. First USA Bank, N.A. P.O. Box 8864 Wilmington, DE 19899-8864		C	1997-2000 Credit Card				6,757.42
ACCOUNT NO. 4164198394 J.C. Penny P.O. Box 27570 Albuquerque, NM 87125		C	1997-2000 Credit Card				2,960.28
ACCOUNT NO. 5329055073205608 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		C	2000-2001 Credit Card				3,212.80
ACCOUNT NO. 5329041616001290 MBNA America P.O. Box 15019 Wilmington, DE 19886-5019		C	1997-2000 Credit Card				30,931.02

Sheet no. 2 of 3 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) > $49,907.76

Total (Use only on last page of the completed Schedule F.) >

FORM B6F - Cont.
(10/89)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 5490990859000877 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		C	1997-2000 Credit Card				29,443.71
ACCOUNT NO. Regions Bank 301 St. Charles Avenue New Orleans, LA 70130		C	1999 Personal Loan				5,000.00

Sheet no. 3 of 3 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) ▶ $34,443.71

Total (Use only on last page of the completed Schedule F.) ▶ $196,246.73

(Report also on Summary of Schedules)

Form B6G
(10/89)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST, STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.
Chrysler Credit Corporaiton P. O. Box 7000 Covington, LA 70434	2000 Jeep Cherokee
Chrysler Credit Corporaiton P. O. Box 7000 Covington, LA 70434	2000 Jeep Cherokee

B6H
(6/90)

In re: Gabriel T. Porteous, Jr. Carmella A. Porteous . Case No. 01-12363 Section "A"
Debtor (If known)

SCHEDULE H - CODEBTORS

☑ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

In re **Gabriel T. Porteous, Jr.** **Carmella A. Porteous** Case No. **01-12363 Section "A"**

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

Debtor's Marital Status: **Married**	DEPENDENT'S OF DEBTOR AND SPOUSE		
Debtor's Age: Spouse's Age:	NAMES	AGE	RELATIONSHIP
	Catherine A. Porteous	**19**	**Daughter**

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	**Judge**	
Name of Employer		
How long employed		
Address of Employer	**United States of America** **500 Camp Street** **New Orleans, LA 70130**	

Income: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly.)	$ 7,531.52	$ 0.00
Estimated monthly overtime	$ 0.00	$ 0.00
SUBTOTAL	$ 7,531.52	$ 0.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ 0.00	$ 0.00
b. Insurance	$ 0.00	$ 0.00
c. Union dues	$ 0.00	$ 0.00
d. Other (Specify) _____	$ 0.00	$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	$ 0.00	$ 0.00
TOTAL NET MONTHLY TAKE HOME PAY	$ 7,531.52	$ 0.00
Regular income from operation of business or profession or farm (attach detailed statement)	$ 0.00	$ 0.00
Income from real property	$ 0.00	$ 0.00
Interest and dividends	$ 0.00	$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	$ 0.00	$ 0.00
Social security or other government assistance (Specify) _____	$ 0.00	$ 0.00
Pension or retirement income	$ 0.00	$ 0.00
Other monthly income (Specify) _____	$ 0.00	$ 0.00
TOTAL MONTHLY INCOME	$ 7,531.52	$ 0.00

TOTAL COMBINED MONTHLY INCOME $ 7,531.52 (Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document: NONE

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
EMPLOYEE EARNINGS STATEMENT

D05LAECNOLAE MONTHLY PAY PERIOD 06 ENDING 05/31/00 01007
LOUISIANA EASTERN DISTRICT JUDGE & STAFF NEW ORLEANS

PORTEOUS JR.,G. THOMAS 436-64-1366 UJ 00/05
DIRECT DEPOSIT 065000029 RETIREMENT CODE 2
SALARY 141,300.00

PAY PERIOD EARNINGS	DAYS	PAY	YTD EARNINGS
REGULAR	30.0	11,775.00	70,266.66
GROSS EARNINGS		11,775.00	70,266.66

PAY PERIOD DEDUCTIONS	DEDUCTIONS	YTD DEDUCTIONS
FICA	889.72	5,320.06
FEDERAL TAX MS-M EXEMPT-02 EXTRA-0000	2,603.27	15,564.22
STATE TAX LA MS-M EXEMPT-02 EXTRA-000	313.91	1,876.30
HEALTH INSURANCE PLAN 105		135.03
GOV/T LIFE INS. PLAN BASIC	48.36	288.48
OPTION-A (STANDARD)	3.03	18.18
OPTION-B (ADDITIONAL)	230.75	918.13
OPTION-C (FAMILY)	9.75	19.50
HEALTH INSURANCE PRE-TAX	144.69	723.45
NET PAY	7,531.52	

MESSAGES :
THE FOLLOWING TWO CHANGES BECAME EFFECTIVE MAY 1, 2000:

(1) FEDERAL EMPLOYEES GROUP LIFE INSURANCE ELECTIONS MADE DURING THE 1999 OPEN ENROLLMENT PERIOD

(2) NEW LIFE INSURANCE RATES FROM OPTION C-FAMILY COVERAGE FOR AGES 65 AND OVER

THESE CHANGES ARE REFLECTED IN THIS PAYCHECK.

Form B6J
(6/90)

In re Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12383 Section "A"
Debtor (If known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse".

Rent or home mortgage payment (include lot rented for mobile home)				$	1,429.00
Are real estate taxes included?	Yes	✓	No		
Is property insurance included?	Yes	✓	No		
Utilities Electricity and heating fuel				$	350.00
Water and sewer				$	90.00
Telephone				$	200.00
Other				$	0.00
Home maintenance (repairs and upkeep)				$	200.00
Food				$	750.00
Clothing				$	525.00
Laundry and dry cleaning				$	150.00
Medical and dental expenses				$	300.00
Transportation (not including car payments)				$	250.00
Recreation, clubs and entertainment, newspapers, magazines, etc.				$	0.00
Charitable contributions				$	100.00
Insurance (not deducted from wages or included in home mortgage payments)					
Homeowner's or renter's				$	0.00
Life				$	0.00
Health				$	0.00
Auto				$	350.00
Other				$	0.00
Taxes (not deducted from wages or included in home mortgage payments)					
(Specify)				$	0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)					
Auto				$	330.00
Other Second Car Lease				$	330.00
Second Mortgage on Family Home				$	495.00
Alimony, maintenance or support paid to others				$	0.00
Payments for support of additional dependents not living at your home				$	686.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)				$	0.00
Other Cable Television				$	45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)				$	6,580.00

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income		$	7,531.52
B. Total projected monthly expenses		$	6,580.00
C. Excess income (A minus B)		$	951.52
D. Total amount to be paid into plan each	Monthly (interval)	$	875.00

In re: Gabriel T. Porteous, Jr. 436-64-1366 Carmella A. Porteous 434-78-3992 Case No.

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 16 sheets plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief.

Date: 4-9-01

Signature: Gabriel T. Porteous, Jr.

Date: 4-9-01

Signature: Carmella A. Porteous

[If joint case, both spouses must sign]

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

(NOT APPLICABLE)

Penalty for making a false statement or concealing property. Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT

Eastern District of Louisiana

In re:	Gabriel T. Porteous, Jr.	Carmella A. Porteous	Case No.	01-12363 Section "A"
	436-64-1366	434-78-3992	Chapter	13

STATEMENT OF FINANCIAL AFFAIRS

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE	FISCAL YEAR PERIOD
146,450.00	Joint Gross Income	1999
146,799.00	Joint Gross Income	2000
35,325.00	Joint Gross Income	2001

2. Income other than from employment or operation of business

None ☑ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Normal Installments			

None ☑ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are seperated and a joint petition is not filed.)

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☑ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

None ☑ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

5. Repossessions, foreclosures and returns

None ☑ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

6. Assignments and receiverships

None ☑ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

None ☑ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

7. Gifts

None ☑ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

8. Losses

None ☑ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

9. Payments related to debt counseling or bankruptcy

None ☑ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

10. Other transfers

None ☑ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petiton is filed, unless the spouses are separated and a joint petition is not filed.)

11. Closed financial accounts

None ☑ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

12. Safe deposit boxes

None ☑ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

13. Setoffs

None ☑ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

14. Property held for another person

None ☑ List all property owned by another person that the debtor holds or controls.

15. Prior address of debtor

None ☑ If the debtor has moved within the two years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

16. Nature, location and name of business

None ☑ a. If the debtor is an individual, list the names and addresses of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within two years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **two years** immediately preceding the commencement of this case.

b. If the debtor is a partnership, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within the **two years** immediately preceding the commencement of this case.

c. If the debtor is a corporation, list the names and addresses of all business in which the debtor was a partner or owned 5 percent or more of the voting securities within **two years** immediately preceding the commencement of this case.

17. Books, records and financial statements

None ☑ a. List all bookkeepers and accountants who within six years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

None ☑ b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

None ☑ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

None ☑ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

18. Inventories

None ☑ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

None ☑ b. List the name and address of the person having possession of the records of each of the two inventories reported in 18a., above.

19. Current Partners, Officers, Directors and Shareholders

None ☑ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

None ☑ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

20. Former partners, officers, directors and shareholders

None ☑ a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

None ☑ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

21. Withdrawals from a partnership or distributions by a corporation

None ☑ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date 4-9-01 Signature of Debtor Gabriel T. Porteous, Jr.

Date 4-9-01 Signature of Joint Debtor Carmella A. Porteous

UNITED STATES BANKRUPTCY COURT
Eastern District of Louisiana

In re: **Gabriel T. Porteous, Jr.** 436-64-1366 **Carmella A. Porteous** 434-78-3992 Case No. **01-12363 Section "A"** Chapter **13**

CHAPTER 13 PLAN

NOTICE

THIS PLAN CONTAINS EVIDENTIARY MATTER WHICH, IF NOT CONTROVERTED, MAY BE ACCEPTED BY THE COURT AS TRUE. CREDITORS CANNOT VOTE ON THIS PLAN BUT MAY OBJECT TO ITS CONFIRMATION PURSUANT TO BANKRUPTCY CODE § 1324, AND LOCAL RULES. ABSENT ANY SUCH OBJECTION, THE COURT MAY CONFIRM THIS PLAN AND ACCEPT THE VALUATION AND ALLEGATIONS CONTAINED HEREIN.

The Debtor(s) above named hereby proposes the following plan.

1. Debts. All debts are provided for by this Plan. Only creditors holding claims duly proved and allowed shall be entitled to payments from the Trustee. (See Notice of Filing of Bar Date.) Trustee shall not file a claim on behalf of any creditor.

2. Payments. As of the date of this plan, the debtor has paid **$0.00** to the Trustee. Debtor and/or any entity from whom the debtor(s) receive income shall pay to the Trustee the sum of **$875.00 Monthly,** commencing **April 28, 2001,** for **36** months for a total of **$31,500.00** or until such amounts are paid that will afford payment of all allowed and proven claims in the amounts payable under this Plan.

Graduated Payments:	BEGIN MONTH	# OF MONTHS	ADJUSTMENT

3. Plan Payments. The Trustee, from available funds, shall make payments to creditors in the following amounts and order. All dates for beginning of payments are estimates only and may be adjusted by the Trustee as necessary to carry out the terms of this plan.

A. DEBTOR'S ATTORNEY	FEE REQUESTED	PAID TO DATE	BALANCE DUE	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS
Claude C. Lightfoot, Jr.	**1,750.00**	**0.00**	**1,750.00**	**833.33**	**1**	**2**	**1,750.00**
	0.00	**0.00**		**83.34**	**3**	**1**	

B. Mortgage Arrears. (Regular monthly payments to be made by Debtor and to start on the first due date after date of filing petition.)

CREDITOR	RATE	ARREARS	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS
NONE						

C. Secured Claims. (A creditor's secured claim shall be the net amount due as of date of filing or the value of the collateral to which creditor's lien attaches, whichever is less. Interest shall be allowed at contract rate or **8.00%** APR whichever is less. Creditor shall retain its lien until the allowed secured portion of the claim is fully paid.)

CREDITOR & COLLATERAL	RATE	CLAIM	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS
i. Secured Claims - Paid in full						
NONE						
ii. Secured Claims - Cure default only						
NONE						

RY

In re: **Gabriel T. Porteous, Jr.** **436-84-1366** **Carmella A. Porteous** **434-78-3992** Case No. **01-12363 Section "A"** Chapter **13**

D. Priority Claims. (Unsecured claims entitled to priority under 11 U.S.C. § 507 shall be paid in full as follows.)

CREDITOR	PRIORITY CLAIM	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS

E. Separate Class of Unsecured Claims. (May include co-signed debts as provided for by 11 U.S.C. § 1301, including interest at contract rate.)

CREDITOR & CLASSIFICATION	UNSECURED CLAIM	RATE	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS

F. Unsecured Creditors. (All other creditors not scheduled above are deemed unsecured without priority and shall be paid pro rata from funds remaining after payment of above scheduled claims. Debtor estimates the unsecured claims to total **$ 193,033.93,** and proposes to provide at least **$,28,250.00** which will pay in full said creditors' claims, or in no event, provide a composition percentage of less than **14.63%.** (Funds Provided/Unsecured Claims)

G. Lien Avoidance. (Debtor intends to file a motion, pursuant to Bankruptcy Rule 4003(d) to avoid all nonpossesssory, nonpurchase money security interests and judicial liens as provided by 11 U.S.C. § 522(f), and the plan herein provides for payment of such liens as general unsecured claims only. Any creditors' claim or portion thereof not listed in paragraph C above is to be treated as unsecured and, unless objected to, such unsecured status, for purposes of this plan, will be binding upon confirmation, but the lien shall survive unless avoided.

H. Leases and Contracts. The Debtor hereby assumes the following unexpired leases and executory contracts, and rejects all others.

NAME OF CREDITOR	DESCRIPTION
Chrysler Credit Corporaiton	**2000 Jeep Cherokee**
Chrysler Credit Corporaiton	**2000 Jeep Cherokee**

I. Miscellaneous Provisions.

Debtors assume the vehicle leases with Chrysler Credit.

4. Secured Claims - Paid directly by debtor(s). The following creditors' claims are fully secured, shall be paid directly by the debtors, and receive no payments under paragraph 3 above:

CREDITOR	COLLATERAL	MARKET VALUE	AMOUNT OF CLAIM
NONE			

5. Future Income. Debtor(s) submits all future earnings or other future income to such supervision and control of the Trustee as is necessary for the execution of this Plan.

6. Standing Trustee Percentage Fee. Pursuant to 28 U.S.C. § 586(e)(B), the Attorney General, after consultation with the United States Trustee, sets a percentage fee not to exceed ten percent of payments made to creditors by the Trustee under the terms of this Plan.

In re: Gabriel T. Porteous, Jr. 436-64-1366 | Carmella A. Porteous 434-78-3992 | Case No. Chapter 13

SUMMARY AND ANALYSIS OF PLAN PAYMENTS TO BE MADE BY TRUSTEE

A. Total debt provided under the Plan and administrative expenses

1. Attorney Fees	1,750.00
2. Mortgage Arrears	0.00
3. Secured Claims	0.00
4. Priority Claims	0.00
5. Separate Class of Unsecured Claims	0.00
6. All other unsecured claims	28,250.00
Total payments to above Creditors	30,000.00
Trustee percentage	1,500.00
* Total Debtor payments to the Plan	31,500.00

* Total payments must equal total of payments set forth in paragraph 2 on page 1 of this Plan.

B. Reconciliation with Chapter 7

1. Interest of unsecured creditors if Chapter 7 filed	
a. Total property of debtor	263,160.27
b. Property securing debt	156,276.13
c. Exempt property	52,950.27
d. Priority unsecured claims	0.00
e. Chapter 7 trustee fee	5,598.59
f. Funds for Chapter 7 distribution (est.)	46,335.28
2. Percent of unsecured, nonpriority claims paid under Plan	14.63
3. Percent of unsecured, nonpriority claims paid if Chapter 7 filed (est.)	26.90

Attorney for Debtor(s):

Claude C. Lightfoot, Jr.
LA 17989

Claude C. Lightfoot, Jr. P.C.
3500 N. Causeway Blvd.
Suite 450
Metairie, LA 70002

Phone: (504) 838-8571
Fax: (504) 838-8572

Signed: _____
Claude C. Lightfoot, Jr.

Signed: _____
Gabriel T. Porteous, Jr., Debtor

Signed: _____
Carmella A. Porteous, Joint Debtor

Dated: 4-9-01

United States Bankruptcy Court

Eastern District of Louisiana

In re: *Chapter 13*

GABRIEL T PORTEOUS JR
CARMELLA A PORTEOUS Case #01-12363

PO BOX 1723
HARVEY LA 70059

TRUSTEE'S OBJECTION TO CONFIRMATION

Now into Court comes S. J. Beaulieu, Jr., Chapter 13 Trustee, who respectfully recommends that the Court deny confirmation of this case for the following reason or reasons:

DUE TO EQUITY IN THE PROPERTY, THE PLAN IS NOT IN THE BEST OF INTEREST TO THE UNSECURED CREDITORS. PLAN DOES NOT SHOW ALL DISPOSABLE INCOME AND HAS EXCESSIVE EXPENSES FOR FOOD, CLOTHING, MEDICAL/DENTAL, CHARITABLE CONTRIBUTIONS AND PAYMENT OF TUITION.

S. J. Beaulieu, Jr.
Chapter 13 Trustee

Attorney for Debtor:

CLAUDE C LIGHTFOOT JR
STE 450
3500 N CAUSEWAY BLVD
METAIRIE LA 70002

Certificate of Service

I hereby certify that a copy of the foregoing pleading was mailed this date to all parties of interest herein, including:

Debtor ✓ Atty ✓

Creditor ____ Employer ____

S J Beaulieu, Jr. Trustee

SC00716

DEF01955

PORT Exhibit 1100 (g)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF	CASE NUMBER
Gabriel T. Porteous, Jr. **Carmella A. Porteous**	**01-12363** **Section "A"**
DEBTORS	CHAPTER 13

AMENDED SCHEDULE F AND MODIFIED CHAPTER 13 PLAN PRIOR TO CONFIRMATION

Respectfully submitted,

CLAUDE C. LIGHTFOOT, JR., P.C.

Claude C. Lightfoot, Jr. (17989)
3500 N. Causeway Blvd.
Suite 450
Metairie, LA 70002
PH: (504) 838-8571
Attorney for Debtors

P-11

Form B6J
(6/90)

In re Gabriel T. Porteous, Jr. Carmella A. Porteous , Case No. 01-12383 Section "A"
Debtor (If known)

AMENDED SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

FILED
2001 NOV 26 A 9:27
CLERK
UNITED STATES

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse".

Rent or home mortgage payment (include lot rented for mobile home)				$ 1,429.00
Are real estate taxes included?	Yes ✓	No		
Is property insurance included?	Yes ✓	No		
Utilities Electricity and heating fuel				$ 350.00
Water and sewer				$ 110.00
Telephone				$ 200.00
Other				$ 0.00
Home maintenance (repairs and upkeep)				$ 200.00
Food				$ 450.00
Clothing				$ 200.00
Laundry and dry cleaning				$ 150.00
Medical and dental expenses				$ 300.00
Transportation (not including car payments)				$ 250.00
Recreation, clubs and entertainment, newspapers, magazines, etc.				$ 0.00
Charitable contributions				$ 100.00
Insurance (not deducted from wages or included in home mortgage payments)				
Homeowner's or renter's				$ 0.00
Life				$ 0.00
Health				$ 0.00
Auto				$ 350.00
Other				$ 0.00
Taxes (not deducted from wages or included in home mortgage payments)				
(Specify)				$ 0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)				
Auto				$ 330.00
Other Second Car Lease				$ 330.00
Second Mortgage on Family Home				$ 495.00
Alimony, maintenance or support paid to others				$ 0.00
Payments for support of additional dependents not living at your home				$ 586.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)				$ 0.00
Other Cable Television				$ 45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)				$ 5,875.00

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income		$ 7,531.52
B. Total projected monthly expenses		$ 5,875.00
C. Excess income (A minus B)		$ 1,656.52
D. Total amount to be paid into plan each	Monthly (interval)	$ 1,800.00

Carmella A Porteous

UNITED STATES BANKRUPTCY COURT

Eastern District of Louisiana

In re: **Gabriel T. Porteous, Jr.** 438-64-1366 **Carmella A. Porteous** 434-78-3992 Case No. **01-12363 Section "A"** Chapter **13**

FILED

2001 MAY 29 A 9:27

CLERK UNITED STATES DISTRICT COURT

AMENDED - CHAPTER 13 PLAN

NOTICE

THIS PLAN CONTAINS EVIDENTIARY MATTER WHICH, IF NOT CONTROVERTED, MAY BE ACCEPTED BY THE COURT AS TRUE. CREDITORS CANNOT VOTE ON THIS PLAN BUT MAY OBJECT TO ITS CONFIRMATION PURSUANT TO BANKRUPTCY CODE § 1324, AND LOCAL RULES. ABSENT ANY SUCH OBJECTION, THE COURT MAY CONFIRM THIS PLAN AND ACCEPT THE VALUATION AND ALLEGATIONS CONTAINED HEREIN.

The Debtor(s) above named hereby proposes the following plan.

1. Debts. All debts are provided for by this Plan. Only creditors holding claims duly proved and allowed shall be entitled to payments from the Trustee. (See Notice of Filing of Bar Date.) Trustee shall not file a claim on behalf of any creditor.

2. Payments. As of the date of this plan, the debtor has paid **$0.00** to the Trustee. Debtor and/or any entity from whom the debtor(s) receive income shall pay to the Trustee the sum of **$1,600.00 Monthly,** commencing **April 28, 2001,** for **36** months for a total of **$57,600.00** or until such amounts are paid that will afford payment of all allowed and proven claims in the amounts payable under this Plan.

Graduated Payments:	BEGIN MONTH	# OF MONTHS	ADJUSTMENT

3. Plan Payments. The Trustee, from available funds, shall make payments to creditors in the following amounts and order. All dates for beginning of payments are estimates only and may be adjusted by the Trustee as necessary to carry out the terms of this plan.

A.

DEBTOR'S ATTORNEY	FEE REQUESTED	PAID TO DATE	BALANCE DUE	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS
Claude C. Lightfoot, Jr.	**1,750.00**	**0.00**	**1,750.00**	**1,523.81**	**1**	**1**	**1,750.00**
	0.00	**0.00**		**226.19**	**2**	**1**	

B. Mortgage Arrears. (Regular monthly payments to be made by Debtor and to start on the first due date after date of filing petition.)

CREDITOR	RATE	ARREARS	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS
NONE						

C. Secured Claims. (A creditor's secured claim shall be the net amount due as of date of filing or the value of the collateral to which creditor's lien attaches, whichever is less. Interest shall be allowed at contract rate or **8.00%** APR whichever is less. Creditor shall retain its lien until the allowed secured portion of the claim is fully paid.)

CREDITOR & COLLATERAL	RATE	CLAIM	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS
i. Secured Claims - Paid in full						
NONE						
ii. Secured Claims - Cure default only						
NONE						

DEF01958

PORT Exhibit 1100 (i)

In re: **Gabriel T. Porteous, Jr.** **436-64-1366** | **Carmella A. Porteous** **434-78-3992** | Case No. **01-12383 Section "A"** Chapter **13**

D. Priority Claims. (Unsecured claims entitled to priority under 11 U.S.C. § 507 shall be paid in full as follows.)

CREDITOR	PRIORITY CLAIM	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS

E. Separate Class of Unsecured Claims. (May include co-signed debts as provided for by 11 U.S.C. § 1301, including interest at contract rate.)

CREDITOR & CLASSIFICATION	UNSECURED CLAIM	RATE	— PAYMENT SCHEDULE — PAYMENT	MONTH	LENGTH	TOTAL PAYMENTS

F. Unsecured Creditors. (All other creditors not scheduled above are deemed unsecured without priority and shall be paid pro rata from funds remaining after payment of above scheduled claims. Debtor estimates the unsecured claims to total **$ 193,033.93**, and proposes to provide at least **$,83,107.14** which will pay in full said creditors' claims, or in no event, provide a composition percentage of less than **27.51%**. (Funds Provided/Unsecured Claims)

G. Lien Avoidance. (Debtor intends to file a motion, pursuant to Bankruptcy Rule 4003(d) to avoid all nonpossesssory, nonpurchase money security interests and judicial liens as provided by 11 U.S.C. § 522(f), and the plan herein provides for payment of such liens as general unsecured claims only. Any creditors' claim or portion thereof not listed in paragraph C above is to be treated as unsecured and, unless objected to, such unsecured status, for purposes of this plan, will be binding upon confirmation, but the lien shall survive unless avoided.

H. Leases and Contracts. The Debtor hereby assumes the following unexpired leases and executory contracts, and rejects all others.

NAME OF CREDITOR	DESCRIPTION
Chrysler Credit Corporaiton	**2000 Jeep Cherokee**
Chrysler Credit Corporaiton	**2000 Jeep Cherokee**

I. Miscellaneous Provisions.

Debtors assume the vehicle leases with Chrysler Credit.

4. Secured Claims - Paid directly by debtor(s). The following creditors' claims are fully secured, shall be paid directly by the debtors, and receive no payments under paragraph 3 above:

CREDITOR	COLLATERAL	MARKET VALUE	AMOUNT OF CLAIM
NONE			

5. Future Income. Debtor(s) submits all future earnings or other future income to such supervision and control of the Trustee as is necessary for the execution of this Plan.

6. Standing Trustee Percentage Fee. Pursuant to 28 U.S.C. § 586(e)(B), the Attorney General, after consultation with the United States Trustee, sets a percentage fee not to exceed ten percent of payments made to creditors by the Trustee under the terms of this Plan.

In re: **Gabriel T. Porteous, Jr.** 436-64-1366 | **Carmella A. Porteous** 434-78-3992 | Case No. **01-12363 Section "A"** | Chapter **13**

SUMMARY AND ANALYSIS OF PLAN PAYMENTS TO BE MADE BY TRUSTEE

A. Total debt provided under the Plan and administrative expenses

1. Attorney Fees	0.00
2. Mortgage Arrears	0.00
3. Secured Claims	0.00
4. Priority Claims	0.00
5. Separate Class of Unsecured Claims	53,107.14
6. All other unsecured claims	53,107.14
Total payments to above Creditors	54,657.14
Trustee percentage	2,742.86
* Total Debtor payments to the Plan	57,600.00

* Total payments must equal total of payments set forth in paragraph 2 on page 1 of this Plan.

B. Reconciliation with Chapter 7

1. Interest of unsecured creditors if Chapter 7 filed	
a. Total property of debtor	263,160.27
b. Property securing debt	158,278.13
c. Exempt property	52,950.27
d. Priority unsecured claims	0.00
e. Chapter 7 trustee fee	5,598.59
f. Funds for Chapter 7 distribution (est.)	46,335.28
2. Percent of unsecured, nonpriority claims paid under Plan	27.51
3. Percent of unsecured, nonpriority claims paid if Chapter 7 filed (est.)	26.90

Attorney for Debtor(s):

Claude C. Lightfoot, Jr.
LA 17989

Claude C. Lightfoot, Jr. P.C.
3500 N. Causeway Blvd.
Suite 450
Metairie, LA 70002

Phone: 504/838-9571
Fax: 504/838-9572

Signed: _____
Claude C. Lightfoot, Jr.

Signed: _____
Gabriel T. Porteous, Jr., Debtor

Signed: _____
Carmella A. Porteous, Joint Debtor

Dated: 5-29-01

United States Bankruptcy Court
Eastern District of Louisiana

In Re:
Gabriel T. Porteous
Carmella A. Porteous
P.O. Box 1723
Harvey, LA 70059

Case No.
01-12363

SSN (1) 436-64-1366 SSN(2) 434-78-3992

Date: 05-29-01

SUMMARY AND ANALYSIS OF CHAPTER 13 PLAN

S.J. Beaulieu, Jr., Trustee in the above captioned cause, files the following Summary and Analysis of the Debtor(s) Chapter 13 Plan, in accordance with 11 U.S.C. Sec. 1302.

1. Exhibit 'A" reflects the Debtor's good faith estimate of income and reasonably necessary living expenses, and reflects the apparent ability to fund the Plan.

2. The Debtor proposes to pay the sum of $1,600.00 per month, for a period of 36 months to be distributed as indicated in the following paragraphs.

3. The Plan proposes to make the following disbursement to the Debtor's attorney:

Name Of Atty.	Mthly Pmt	Term	Total
Claude Lightfoot, Jr.	$375.00	01 Mth.	$1750.00
	$ 50.00	28 Mths.	

4. Secured Creditors:

A. The following secured claims are dealt with pursuant to 11 U.S.C. Sec. 1325 (a) (5) (B):

Name of Creditor	Clm Amt Or Sch Amt	Value of Collateral	Int. Rate	Mthly Pmt
NONE				

B. The following secured claims are dealt with pursuant to 11 U.S.C. Sec. 1325 (a) (5) (C):

Name of Creditor	Clm Amt or Sch Amt	Value of Collateral	Creditor Comment
NONE			

The Debtor abandons all interest in the collateral securing the claim and will surrender possession thereof upon confirmation of the Plan.

C. The following secured claims are dealt with pursuant to 11 U.S.C Sec. 1322 (b) (5) as follows:

1. BANK ONE : The debtor, in lieu of the Trustee, shall act as disbursing agent for the regular contract installment in the amount of $ 495.00, for the duration of the plan.

SC00694

DEF01978

PORT Exhibit 1100 (o)

2. CHRYSLER CREDIT CORP: The Debtor, in lieu of the Trustee, shall act as disbursing agent for the regular contract installment in the amount of $330.00, for the duration of the plan.

3. CHRYSLER CREDIT CORP: The Debtor, in lieu of the Trustee, shall act as disbursing agent for the regular contract installment in the amount of $330.00, for the duration of the plan.

4. FIDELITY HOMESTEAD: The Debtor, in lieu of the Trustee, shall act as disbursing agent for the regular contract installment in the amount of $1,429.00, for the duration of the plan.

Payment of the arrearages due shall be made by the Trustee as follows:

Name of Creditor	Arrearages Due	Int. Rate	Mthly Pmt.
NONE			

D. The following creditors claims are not dealt with under the plan:

Name of Creditor	Claimed or Scheduled Amount
NONE	

5. Priority Creditors and Specially Classified Unsecured Claims:

Name of Creditor	Clm or Sch Amount	Mthly Pmt.
NONE		

6. Special conditions affecting creditors are noted as follows:

CONFIRMATION OF THE DEBTOR'S CHAPTER 13 PLAN SHALL NOT BE CONSTRUED AS APPROVAL OF THE FEES CHARGED BY THE DEBTOR'S ATTORNEY.

7. This summary and Analysis of this Plan is based on a review by the Trustee of the schedules, plan, claims, other pleadings on file, the testimony of the Debtor at the meeting of creditors, and other supporting documentation requested by the Trustee. In cases where a claim has not been filed by a creditor, the Trustee has relied on the schedules to establish the amount of a debt. The actual amounts of each payment, and the months in which payments are to occur may vary, as they are dependent upon the timing of payments to the Trustee by the Debtor, and the allowed amounts of certain claims which may not yet be conclusively determined. Based upon the foregoing, assuming all payments are timely made by the Debtor, the estimated dividend to unsecured creditors will be 27.51 of the amount claimed.

8. After thorough review of the Chapter 13 Statement, claims that have been filed and served on the Trustee, and other matters of record, including the testimony of the Debtor at the Meeting of Creditors, it is the opinion of the Trustee that the Plan meets the standards for confirmation contained in 11 U.S.C. Sec. 1325 (a), and should be confirmed.

Dated: 05-29-01

S.J. Beaulieu, Jr., Trustee
Suite 515
433 Metairie Rd.
Metairie, LA 70005
(504) 831-1313

SC00695

DEF01979

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Summary ans Analysis of Chapter 13 Plan has been served on the Debtor(s) and the Debtor(s)' attorney by mailing a copy of same to the addresses listed below via first class mail, on this 25th day of June, 2001.

Debtor(s) Attorney:

Claude C. Lightfoot, Jr.
3500 N. Causeway Blvd.
Suite 450
Metairie, LA 70002
(504) 838-8571

S.J. Beaulieu, Jr., Trustee
Suite 515
433 Metairie Rd.
Metairie, LA 70005
(504) 831-1313

SC00696

DEF01980

United States Bankruptcy Court *Eastern District of Louisiana*	01-12363 Case Number

CHAPTER 13 TRUSTEE'S FINAL REPORT AND ACCOUNT

In re:	GABRIEL T PORTEOUS JR CARMELLA A PORTEOUS 4801 NEYREY DR METAIRIE LA 70002	This case was: *COMPLETED* Final Meeting of Creditors: *8:40 AM, May 18, 2004*

S. J. Beaulieu, Jr., Chapter 13 Trustee, respectfully submits for the Court's approval a report of his administration of this estate, avers that the case has been fully administered pursuant to FRBP 5009, and prays that he be relieved of his trust. The total amount received from or on behalf of the debtor was $ 57,600.00, which was disbursed as follows:

#	NAME	TYPE	% ALLOWED	CLAIM AMT	PRINCIPAL PD	INTEREST PD
01	BANK ONE	DIRECT PAY	.00	.00	.00	.00
02	CHRYSLER FINANCIAL CORP	DIRECT PAY	.00	6,982.57	.00	.00
03	CHRYSLER FINANCIAL CORP	DIRECT PAY	.00	6,979.35	.00	.00
04	FIDELITY HOMESTEAD	DIRECT PAY	.00	109,488.96	.00	.00
05	ECAST SETTLEMENT CORP	UNSECURED	34.55	11,855.57	4,096.10	.00
06	BANK OF LOUISIANA	UNSECURED	34.55	1,910.00	659.91	.00
07	JULES FONTANA ATTY	NOTICE ONLY	.00	.00	.00	.00
08	CHASE BANKCARD SERVICES	UNSECURED	34.55	.00	.00	.00
09	CITIBANK	UNSECURED	34.55	.00	.00	.00
10	RESURGENT CAPITAL SERVICES	UNSECURED	34.55	21,227.06	7,333.95	.00
11	CITIFINANCIAL INC	UNSECURED	34.55	17,711.35	6,119.27	.00
12	CITIFINANCIAL INVESTMENT	NOTICE ONLY	.00	.00	.00	.00
13	EDWARD F BUKATY III	NOTICE ONLY	.00	.00	.00	.00
14	DILLARD NATIONAL BANK	UNSECURED	34.55	5,033.55	1,739.09	.00
15	DILLARD NATIONAL BANK	UNSECURED	34.55	597.88	206.57	.00
16	DISCOVER FINANCIAL SERVICES	UNSECURED	34.55	22,640.41	7,822.25	.00
17	AOL VISA	UNSECURED	34.55	.00	.00	.00
18	FIRST USA	UNSECURED	34.55	.00	.00	.00
19	JC PENNEY/MONOGRAM	UNSECURED	34.55	.00	.00	.00
20	MAX FLOW CORP	UNSECURED	34.55	5,386.54	1,861.05	.00
21	MAX FLOW CORP	UNSECURED	34.55	30,931.02	10,686.67	.00
22	MAX FLOW CORP	UNSECURED	34.55	29,443.71	10,172.80	.00
23	REGIONS BANK	UNSECURED	34.55	5,158.98	1,782.43	.00
25	DILLARD NATIONAL BANK	UNSECURED	34.55	251.54	86.91	.00

Paid to Trustee:	$ 3,274.29	Disbursed to PRIORITY Creditors:	$ .00
Paid to Attorney:	$ 1,750.00	Disbursed to SECURED Creditors:	$ .00
Refunded to Debtor:	$ 8.70	Disbursed to UNSECURED Creditors:	$ 52,567.01

cc: CLAUDE C LIGHTFOOT JR
STE 450
3500 N CAUSEWAY BLVD
METAIRIE LA 70002

S. J. Beaulieu, Jr.
Chapter 13 Trustee

Certificate of Service

I hereby certify that a copy of the foregoing pleading was mailed this date to all parties of interest herein, including:

Debtor ✓ Atty ✓

Creditor ____ Employer ____

S J Beaulieu, Jr. Trustee

By: ____ Date 4/1/04

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PORT Exhibit 1100 (z)

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GOOD FAITH: A ROUNDTABLE DISCUSSION

INTRODUCTION

The following is a Roundtable Discussion of good faith issues in bankruptcy by four distinguished bankruptcy judges: Hon. Lisa Hill Fenning, Hon. William Greendyke, Hon. William Hillman, and Hon. Robert Mark. The discussion was moderated by Prof. Karen Gross of the New York Law School, a member of the Board of Directors of the American Bankruptcy Institute and the Advisory Board for this Law Review. The editors express their appreciation to the judges and Prof. Gross for their generous donation of time and effort to this project.

PROF. GROSS: Let me begin this RoundTable discussion by introducing our distinguished participants: The Honorable Lisa Hill Fenning from the Central District of California; the Honorable Robert Mark from the Southern District of Florida; the Honorable William Hillman from the District of Massachusetts and the Honorable William Greendyke from the Southern District of Texas. I want to begin this discussion by first providing a brief contextual overview.

Issues of good faith are arising with increasing frequency in cases under the Bankruptcy Code. Although the Code contains explicit references to good faith, for example, sections 303, 542, 921, 1129 and 1325, among others,[1] courts have increasingly scrutinized cases to determine if there is an implied standard of good faith in cases which have been filed.[2] Indeed, even

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[1] *See* 11 U.S.C. §§ 303(i)(2), 542(c), 542(d), 921(c), 1129(a)(3), 1325(a)(3) (1992); *see also* 11 U.S.C. §§ 109(c)(5)(B), 363(m), 364(e), 548(c), 549(c), 550(b)(1), 550(b)(2), 550(d)(1), 727(a)(9)(B)(ii), 1113(b)(2), 1114(f)(2), 1125(e), 1126(e), 1144(1), 1225(3) (1992).

[2] Chapter 7: Industrial Ins. Servs. v. Zick (*In re* Zick), 931 F.2d 1124 (6th Cir. 1991); *see also In re* Krohn, 886 F.2d 123 (6th Cir. 1989); *In re* Khan, 35 B.R. 718 (Bankr. W.D. Ky. 1984); John A. Majors, *In Re Zick: Chapter 7's Good Faith Threshold Standard*, 23 U. TOL. L. REV. 583 (1992).

Chapter 11: Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (*In re* Little Creek Dev. Co.), 779 F.2d 1068 (5th Cir. 1986); *In re* Aurora Inv., 134 B.R. 982, 985 (Bankr. M.D. Fla. 1991) ("[I]t is now established beyond peradventure that the court may dismiss a Chapter 11 case for cause if the court finds the Petition was filed in 'bad faith.'"); *In re* Victory Constr. Co., 9 B.R. 549 (Bankr. C.D. Cal. 1981), *modified*, 22 B.R. 597, *vacated as moot*, 37 Bankr. 222 (9th Cir. 1984). *See infra* note 7 (listing more recent decisions).

Chapter 12: Schuldies v. United States (*In re* Schuldies), 122 B.R. 100 (D.S.D. 1990); *In re* Bird, 80 B.R. 861 (Bankr. W.D. Mich. 1987).

Chapter 13: *In re* Love, 957 F.2d 1350 (7th Cir. 1992); *In re* Earl, 140 B.R. 728 (Bankr. N.D. Ind. 1992); *In re* Powers, 135 B.R. 980 (Bankr. C.D. Cal. 1991); *In re* King, 126 B.R. 777 (Bankr. N.D. Ill. 1991); *In re* Roberts, 117 B.R. 677 (Bankr. N.D. Okl. 1990); *In re* Gaudet, 95 B.R. 4 (Bankr. D.R.I. 1989).

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the Supreme Court has entered into this debate in *Johnson v. Home State Bank*,[3] where sequential filings were deemed to be not, per se, bad faith.

Implied good faith has been raised in a wide variety of contexts, and let me give several examples. One example would be a Chapter 11 case where one seeks to obtain relief from tort[4] claims or environmental claims.[5] Another example might be a Chapter 13 case which is filed in order to get a discharge of debts which would be non-dischargeable in a Chapter 7 case,[6] or even a Chapter 7 case which is filed to obtain relief from a state court judgment which was granted as a result of a debtor's deliberate breach of an employment contract.[7] Most recently, with the growing number of single asset Chapter 11 cases, courts are increasingly confronting whether these types of cases should be dismissed because they do not represent a good faith filing.[8]

For an excellent overview of the implied good faith filing requirement, see Lawrence Ponoroff & F. Stephen Knippenberg, *The Implied Good Faith Filing Requirement: Sentinel of an Evolving Bankruptcy Policy*, 85 N.W. U. L. REV. 919 (1991). *See also* Brian S. Katz, *Single Asset Real Estate Cases and the Good Faith Requirement: Why Reluctance to Ask Whether a Case Belongs in Bankruptcy May Lead to the Incorrect Result*, 9 BANKR. DEV. J. 77 (1992).

[3] 111 S. Ct. 2150, 115 L. Ed. 2d. 66, 59 U.S.L.W. 4609, *remanded*, *In re* Johnson, 940 F.2d 609 (10th Cir. 1991), *and remanded*, *In re* Johnson, 1991 U.S. Dist. LEXIS 18769 (D. Kan. 1991). In *Johnson*, the debtor had defaulted on mortgage notes and filed a petition for liquidation under Chapter 7 while foreclosure proceedings were pending. After the state court entered an in rem judgment for the bank, but before a scheduled foreclosure sale, the mortgagor filed for reorganization under Chapter 13. *Id.* The Supreme Court declined to address the good faith issue (remanding it for determination below), indicating that such a sequential filing is not, per se, bad faith. *Id.* at 2156.

[4] *See In re* Johns-Manville Corp., 36 B.R. 727 (Bankr. S.D.N.Y. 1984), *appeal denied*, 39 B.R. 234 (S.D.N.Y. 1984) (Chapter 11 filing commenced to seek respite from class action (asbestos) tort claims); *In re* Whipple, 138 B.R. 137 (Bankr. S.D. Ga. 1991) (Chapter 13 filing to avoid tort claim).

[5] *See* United States Environmental Protection Agency v. Environmental Waste Control, 131 B.R. 410 (N.D. Ind. 1991); *see also In re* Pierce Coal & Constr., 65 B.R. 521 (Bankr. N.D. W. Va. 1986).

[6] *See* Handeen v. LeMaire (*In re* LeMaire), 883 F.2d 1373 (8th Cir. 1989); *In re* Rogers, 140 B.R. 254 (Bankr. W.D. Mo. 1992); *In re* Bush, 120 B.R. 403 (Bankr. E.D. Tex. 1990); *In re* Stewart, 109 B.R. 998 (D. Kan. 1990); Washington Student Loan Guar. Assoc. v. Porter (*In re* Porter), 102 B.R. 773 (9th Cir. 1989), *aff'd*, 1990 U.S. App. LEXIS 20578 (9th Cir. 1990); *In re* Kosenka, 104 B.R. 40 (Bankr. N.D. Ind. 1989); *In re* Adamu, 82 B.R. 128 (Bankr. D. Or. 1988).

[7] *See* Industrial Ins. Servs. v. Zick (*In re* Zick), 931 F.2d 1124 (6th Cir. 1991); *see also* Bybee v. Geer (*In re* Geer), 137 B.R. 37 (Bankr. W.D. Mo. 1991).

[8] Humble Place Joint Venture v. Fory (*In re* Humble Place Joint Venture), 936 F.2d 814 (5th Cir. 1991); *In re* Denver Inv. Co., 141 B.R. 228 (Bankr. N.D. Fla. 1992); Pleasant Pointe Apartments, Ltd. v. Kentucky Hous. Corp. (*In re* Pleasant Pointe Apartments, Ltd.), 139 B.R. 828 (W.D. Ky. 1992); *In re* Aurora Invest., 134 B.R. 982 (Bankr. M.D. Fla. 1991); *In re* Nesenkeag, 131 B.R. 246 (Bankr. D. N.H. 1991); *In re* Reiser Ford, 128 B.R. 234 (Bankr. E.D. Mo. 1991); *In re* 1020 Warburton Ave. Realty Corp., 127 B.R. 333 (Bankr. S.D.N.Y. 1991); *In re* I-95 Technology-Industrial Park, L.P., 126 B.R. 11 (Bankr. D. R.I. 1991); *In re* Campus Hous. Developers, 124 B.R. 867 (Bankr. N.D. Fla., 1991).

When the good faith issue is raised in single asset cases, most frequently by creditors, although sometimes by the courts sua sponte, there is little consensus among circuits or even districts as to what constitutes good faith and how it should be applied.[9]

This Round Table discussion is intended to elaborate on these issues and more particularly, to probe the meaning of good faith in single asset Chapter 11 cases. To get the discussion underway, let me pose my first question.

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[9] Pleasant Pointe Apartments, Ltd. v. Kentucky Hous. Corp., (*In re* Pleasant Pointe Apartments, Ltd.), 139 B.R. 828 (W.D. Ky. 1992) (filing of Chapter 11 petition found to be in bad faith for a single asset debtor facing state foreclosure action). Court cited indicia of bad faith enumerated in Little Creek Dev. Co. v. Commonwealth Mortgage Co. (*In re* Little Creek Development Co.), 779 F.2d 1068 (5th Cir. 1986) and Carolin Corp. v. Miller, 886 F.2d 693 (4th Cir. 1989). Court determined that debtor filed petition to hold single asset hostage rather than to reorganize asset; RCO Inv. Co. v. Belair 301-50 S.W. Quadrant Commercial Properties, (*In re* Belair 301-50 S.W. Quadrant Commercial Properties), 137 B.R. 191 (D. Md. 1992) (relying on analysis set forth in three separate decisions [*Little Creek*, 779 F.2d at 1072, *Carolin*, 886 F.2d at 701, and *In re* Grieshop, 63 B.R. 657 (N.D. Ind. 1986)] court reversed Bankruptcy Court's finding of good faith. Opinion relied most heavily on the standard set forth in *Carolin* and concluded that the debtor's plan was objectively futile and filed with subjective bad faith); *In re* Landings Assocs., Ltd. Partnership, 145 B.R. 101 (Bankr. M.D. Fla. 1992). In holding that a single asset debtor filed Chapter 11 petition in bad faith, the court stated:

> mechanical application of the factors set forth in *Little Creek*, 779 F.2d at 1073 indicates that this case has most of the hallmarks of bad faith . . . . However, it is equally recognized that not one single factor set forth in *Little Creek*, is determinative of the issue of the lack of good faith of a debtor seeking relief under Chapter 11 of the Bankruptcy Code. While *Little Creek* is still well-recognized as persuasive authority, it is equally true that there is nothing inherently improper for a debtor with one single asset, generally an income-producing commercial property, to attempt to reorganize its affairs under the rehabilitation provisions of the Bankruptcy Code. In the last analysis, the key considerations are (1) the Debtor's motivation to file the petition; (2) the economic vitality of the Debtor; (3) the Debtor's real need to reorganize and (4) the ability of the Debtor to achieve reorganization.

Id. at 102.

In re Franklin Mortgage & Inv. Co., a separate analysis was maintained for ordinary, single asset debtors and those who fit within the "new debtor syndrome." 143 B.R. 295 (Bankr. D. Dist. Col. 1992). The court noted that the "case has all the earmarkings of the 'new debtor syndrome'. . . ." *Id.* at 300. In framing its analysis the court stated:

> Where a "new debtor syndrome" and resultant unfair delay of creditors is present, it makes no sense to require objective futility. The court must be able to protect its jurisdictional integrity. In contrast, other single asset cases not involving the "new debtor syndrome" usually present the question whether the case is futile and hence filed in bad faith. It makes sense to require objective futility before dismissing those cases. That is not what is at stake in a "new debtor" case. In the "new debtor" case the critical inquiry is whether the debtor has gained unfair advantage by employment of the new debtor device.

Id. at 302.

GOOD FAITH CHALLENGES IN SINGLE ASSET CASES

Are all of you seeing a large number of single asset cases in your Districts, and are these cases being challenged either by you or by creditors on the basis of good faith?

JUDGE MARK: I would guess that in the Southern District of Florida we may have the highest percentage among the panelists here of Chapter 11's that are, in fact, single asset real estate cases. It varies and it may be slowing down a bit, but we certainly see many single asset real estate cases and I would even say it's a substantial percentage of the Chapter 11's in total.

PROF. GROSS: How many of those cases are challenged on the basis of good faith?

JUDGE MARK: Virtually all of them sooner or later, unless there is some consensual arrangement that's been negotiated at the start of the case. I am overgeneralizing, of course, but typically the cases are filed right before summary judgment hearing or often right before the foreclosure sale. The creditor/borrower is sophisticated enough, given the state of law in the 11th Circuit to come in quickly with a motion for stay relief under section 362(d)(1) for cause, or for dismissal, arguing bad faith. So we are confronted with these motions early on in many cases.

JUDGE GREENDYKE: Judge Mark, what kind of numbers are we talking about in terms of total number of Chapter 11's and what percentage of that might be single asset real estate cases? I really don't have an idea what kind of numbers you are talking about.

JUDGE MARK: I probably have maybe 150 pending Chapter 11's. My numbers may be way off. I didn't really do a statistical check. And it may very well be that half of them are single asset real estate cases.

JUDGE GREENDYKE: That's a lot.

JUDGE MARK: South Florida has been over-built with shopping centers, office buildings, and less commonly, residential properties. We have visiting judges coming down to Palm Beach and they could virtually

take a Chapter 11 golf tour when they are not sitting because we also have a lot of country club developments that are in Chapter 11.

JUDGE GREENDYKE: When I started out in 1987 I had given to me 540, 550 Chapter 11 cases, and I would say hundreds of them were single asset cases that took years to get rid of. Now I have 125 cases and probably 25 of those are two large conglomerate-type debtors that are not real estate related at all.

The single asset real estate cases are virtually a thing of the past in Houston. Coincidentally, I was in a hearing for three hours this afternoon with one, but it's been since the springtime since I've had a confirmation hearing in a single asset Chapter 11.

We in Houston raise good faith issues sua sponte. Of course, creditors always had good faith on their minds because it was their first punch besides a motion to lift.

JUDGE FENNING: In the seven years I have been on the bench in the Central District, the percentage of single asset filings on my calendar has fluctuated with the real estate economy. And for awhile I had a lot of Texas single asset real estate cases, but those are history.

At the moment, probably about half of my Chapter 11 cases are single asset real estate cases. About a quarter of those are "house" cases, that is, where the only purpose for filing a consumer Chapter 11 is to try and stave off foreclosure on the house. In the Los Angeles housing market, a lot of fairly ordinary houses are sufficiently costly to put people over the debt limits for Chapter 13. Most of our Chapter 11 "house" cases are pro se filings.

The single asset cases at this point include apartment buildings, shopping centers and vacant land. Most have been filed by limited partnerships, although recently, more single asset debtors are corporations. In addition to the single asset cases, I have some very large individual Chapter 11 cases filed by entrepreneurs in the real estate development or management business who own 20 or 30 or 40 apartment buildings within their individual estates. Those Chapter 11 cases technically don't qualify as "single asset" cases. The overwhelming bulk of my current pending case load of about 620 Chapter 11 cases consists of real estate based cases of one sort or another.

JUDGE HILLMAN: The District of Massachusetts is famous for Chapter 11's. The four of us each have more 11's than any other judges in any other district in the country. I think I have 500 right now. Of those, about one-quarter of them are single asset real estate. Of those, very few are

residential. Most of them are what we call triple-deckers, small real estate folk who went out and bought themselves — they listened to the lecturers on television at night and they went out and bought themselves one asset and maybe they leveraged it and they are down to one.

PROF. GROSS: How do you get to the name "triple-decker"?

JUDGE HILLMAN: In the working class neighborhoods of the Northeast, three-story houses inhabited by three families were built, my guess is 1900 give or take 20 years, and they are called triple-deckers, and they are investment properties in the older residential areas. You live in one and you rent two, that is, if you can get tenants.

JUDGE FENNING: You also asked whether single asset cases are being dismissed for bad faith. In our district, I don't think any of the judges are raising the issues sua sponte. Bad faith is sometimes an argument that is added onto a relief from stay motion. Almost always we are seeing these cases for the first time on a relief from stay that's filed within the first 60 days or on a cash collateral motion that's filed by one or the other parties.

At the moment, the real estate market is about what it is in Massachusetts. It's entirely dead, but we are still having some evidentiary hearings because the appraisals are drastically in conflict. The outcome of the relief from stay motion usually depends upon valuation, rather than "bad faith."

PROF. GROSS: Is that true for you also, Judge Mark, that good faith is not raised sua sponte?

JUDGE MARK: There is no need for it. You would virtually be committing malpractice as a creditor attorney in the 11th Circuit if you did not raise the bad faith issue early on in a Chapter 11, if it met the criteria that have led to dismissals in the 11th Circuit.

PROF. GROSS: We'll get to the standards in a minute but first, do judges raise good faith concerns sua sponte in Massachusetts?

JUDGE HILLMAN: It's been known to happen from time to time. We very seldom see a motion to dismiss in the first few days. I think that's because the case has been in foreclosure and it's in the hands of a real estate lawyer, not a bankruptcy lawyer. But within two weeks they have

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bankruptcy counsel and a (d)(1), (d)(2) motion comes tearing in. Whether they say it or not, they are arguing for dismissal on bad faith grounds.

WHAT IS A SINGLE ASSET CASE?

PROF. GROSS: I just want to make sure that when we talk about single asset cases that we are all talking about the same thing. For me, there is a definitional question here as to what is a single asset Chapter 11 case. The proposed legislation, that was part of the Senate bill, had a definition of single asset Chapter 11 cases. Let me just read you that section and see if you all agree with that definition. Single asset real estate cases involve "real property, other than residential real property with fewer than four residential units, which generates substantially all of the gross income of a debtor and on which no business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto."[10]

JUDGE FENNING: I think we are talking about a slightly bigger universe. The triple-deckers wouldn't come within the statutory definition. Vacant land wouldn't come within the statutory definition, but I consider those single asset real estate filings because the same issues are present; that is, is there anything to reorganize and what is the value.

PROF. GROSS: Are we all agreeing though that single asset Chapter 11 cases involve real estate?

JUDGE FENNING: Yes.

JUDGE HILLMAN: Yes.

JUDGE MARK: But interestingly, the bad faith cases, a lot of the early ones, involved vacant land and it's been an expansion of the concept or expansion of the doctrine that's been applied more and more now to income-producing properties. So it is a broader universe than the definition you just read.

JUDGE FENNING: I suspect part of that expansion occurred because a lot more properties started coming into bankruptcy with a negative

[10] S. 1985, 102d Cong., 2d Sess. § 211 (1992).

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cash flow. That is, they were income-producing, but with a negative cash flow that raised the question of whether the debtor could possibly confirm a plan.

JUDGE HILLMAN: Then I suppose when you get to vacant land you have to consider as a single asset the acreage that has been platted, broken out into lots and is still undeveloped.

JUDGE FENNING: We get a lot that have tentative tract maps out that are pending final plan.

JUDGE HILLMAN: It's still a single asset case. It's one mortgage on one piece of real estate.

PROF. GROSS: Let me try a hypothetical. What is your view of a corporation that was set up to hold a patent or a contract right. Is that a single asset Chapter 11 debtor for purposes of our discussion?

JUDGE MARK: Good topic for law school, but we don't see it much.

PROF. GROSS: Okay, fair enough.

JUDGE GREENDYKE: I think from a practical standpoint, we are all talking about real estate cases whether it's undeveloped real estate or somebody that's got one apartment complex or one shopping center. It can be a patent. My most humorous example of a single asset case arose at a show cause hearing in 1987 where I found out somebody had a model railroad and I inquired about what the scope of the railroad was. He said, "Well, it's about 20 feet by 15 feet," and that was a single asset. It can be anything you want. But by and large we are talking about real estate.

Is Imposition of a Good Faith Requirement Appropriate?

PROF. GROSS: Since you have all taken after academics, let me refer to a commentator, who is not an academic, but who has certainly written academic material. He stated the following about good faith: "The imposition of the good faith requirement appears contrary to the statute,

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illogical, and unworkable in its application."[11] Do you have any views as to the merits of that observation?

JUDGE HILLMAN: That's Marty Bienenstock[12] and he had me two-thirds convinced before I came on the bench, and I thought about it a great deal. Then when I came on, I came into a district where we have a case called *In Re* The Bible Speaks.

PROF. GROSS: An unforgettable name.

JUDGE HILLMAN: The holy writ from Judge Queenan in *In re* The Bible Speaks[13] is that there is a good faith test and there was a good faith test under Roman XI and there is a good faith test under Arabic 11. So the cases in my district are uniform, and there is good faith, Marty to the contrary, notwithstanding.

JUDGE FENNING: I think there is implicit good faith, but we are talking about Chapter 11's here. You cannot confirm a Chapter 11 plan without a determination that it's being proposed in good faith.

JUDGE HILLMAN: That's back end.

JUDGE FENNING: That's back end, but if there is no way they can clear that hurdle at the end of the case and it's obvious at the beginning of the case, you can address the good faith issue at the beginning.

JUDGE GREENDYKE: That is Leif Clark's *Anderson Oaks* case[14] — if one can find out in a 362 hearing or a hearing on a motion to dismiss that it is impossible to confirm a plan, just stop the case right there.

JUDGE FENNING: In the interest of full disclosure, we should tell you Judge Clark just walked into the room a few minutes ago.

JUDGE GREENDYKE: I figured he'd be here.

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[11] MARTIN J. BIENENSTOCK, BANKRUPTCY REORGANIZATION 28 (1987).
[12] Martin J. Bienenstock is a partner with the firm of Weil, Gotshal & Manges in New York.
[13] 65 B.R. 415 (Bankr. D. Mass. 1986).
[14] *In re* Anderson Oaks, 77 B.R. 108 (Bankr. W.D. Tex. 1987).

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PROF. GROSS: I think what Martin Bienenstock is talking about is an implied good faith standard.[15] I think what Judge Fenning is raising is the issue of why we need to focus on this when an explicit good faith standard shows up in section 1129(a)(3)? Can one infer from that you don't think you need —

JUDGE FENNING: I think this is an "angels on the head of a pin" question. You have to pass a good faith hurdle in order to do anything in a Chapter 11. So that can be tested at the beginning of the case as well as at the end of the case, if you have enough evidence at the beginning of the case to reach a conclusion on that question.

JUDGE MARK: Although it's not going to apply in the 11th Circuit because we have clear 11th Circuit authority to dismiss on a finding of bad faith, I think a good argument could be made that in most instances, the same results could be obtained by either stay relief for cause under section (d)(1) of 362 or just a finding under the express provisions of 1112(b) — either (b)(1), that there is continuing loss or diminution of the estate in absence of a reasonable likelihood of rehabilitation or, (b)(2), that there is an inability to effectuate a plan. And it may be that the factors we often look at in determining whether a case is right for dismissal under bad faith just go in a sense to how quickly after the filing of a case do you look at (b)(1) and (b)(2). And part of a way to do it without a separate doctrine of bad faith is just to say that you will look immediately at the ability to effectuate a plan if certain criteria exist. But as I said, in the 11th Circuit we have that doctrine that's now well-established and although lawyers alternatively argue 1112(b)(1) and (b)(2), we can plug into the 11th Circuit doctrine of bad faith and still proceed in that fashion.

JUDGE HILLMAN: It's a question of how far forward do you want to drag the confirmation issues.

PROF. GROSS: Well, if there is an implied good faith standard, where is it found? Where is the authority to create it?

JUDGE GREENDYKE: I think it's a case law creation and it probably comes in under section 105 or just a general inherent ability, at

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[15] MARTIN J. BIENENSTOCK, BANKRUPTCY REORGANIZATION 28-39 (1987).

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least under the 5th Circuit case law, to protect our jurisdiction. If you find that somebody is doing something that's inappropriate or that would constitute an abuse of your jurisdiction, you can cleanse your docket, in effect.

I am paraphrasing liberally Judge Jones' words in *Little Creek* and cases that have followed that. That's where we do it and how we do it.

JUDGE FENNING: But you also find it in Rule 11.

PROF. GROSS: Some people find it in Bankruptcy Rule 9011.[16]

JUDGE FENNING: And 28 U.S.C. section 1927, which is an alternative source of sanction law. It's implicit in federal court that you can review all filings to determine whether they have been made in good faith. I just don't think you have to get to all of those more generic formulations where you are dealing with a statutory requirement that, in order to accomplish what you are supposed to be accomplishing in a Chapter 11 case, you have to be proceeding in good faith. I mean, I rely primarily on section 1129.

JUDGE MARK: I think the 11th Circuit cases just find that section 1112(b) is not exhaustive and that it allows the court to dismiss in the best interest of creditors for cause and then they say there is another ground for dismissal, not expressly stated, but there is a valid ground based on bad faith — and the doctrine has developed. It's sort of an unnumbered cause now under section 1112(b) in the 11th Circuit.

JUDGE HILLMAN: That's exactly how the *Bible* spoke.

JUDGE FENNING: In the 9th Circuit we have *Victory Construction*,[17] which deals with the badges of fraud in "new debtor syndrome" cases. That is the primary scenario in which bad faith is pled and

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[16] Providing in pertinent part,

> that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any purpose, such as to harass, to cause delay, or to increase the cost of litigation.

BANKR. R. PROC. 9011 (1992).

[17] Laborers' Pension Fund v. Victory Constr. Co., No. 85-C-07077, 1985 WL 4066 (N.D. Ill. Nov. 25, 1985).

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argued strenuously as opposed to a throw-away alternative argument on relief from stay in the 9th Circuit. "New debtor syndrome" is the nickname for a new entity created to hold the real property which then is dumped into bankruptcy with no employees, no history, no other source of income.

JUDGE HILLMAN: We have adopted the Ordin test from *Victory*, but we use it also when it isn't a new debtor. If you take the catalogue of events and it just doesn't happen to be a new debtor, it still may flunk the good faith test.

WHAT IS THE TEST FOR GOOD FAITH?

PROF. GROSS: Since we are all talking about what the standard is, let's talk about that specifically. How is it that a court should determine what is good faith in a Chapter 11 single asset real estate case? As you answer, I assume you are answering for yourself, but if you have the view of your circuit or the judges in your district, it may be worth identifying that.

Judge Greendyke, do you want to go first?

JUDGE GREENDYKE: I think, at least from my standpoint, it's difficult to say here's the test. It's usually four or five criteria because it is inherently a fact-intensive type of search. One of the best examples that we have had and used down here is a District Court opinion that was penned by a circuit judge who was sitting by designation, Judge Jones.

The case is called *Chemical Research*[18] and it involved two quarreling factions of a joint venture. One of the venturers, Chemical Research filed for relief under Chapter 11 to gain advantage in state court. It basically represented a two-party dispute over entitlement to some intellectual property rights. There were virtually no creditors, and the company was solvent, with a wonderfully lucrative, profitable business. Judge Jones just said, look, you all don't have the right kind of attitude toward this case. You are not in subjective bad faith, but you are not in objective good faith. That is, you meant well but what you are doing is wrong. This is a two-party dispute and it needs to be resolved outside of bankruptcy court.

Well, I don't think I have ever seen a case like that since then, but lawyers like to argue its application in any apparent two-party dispute. If you

[18] IN RE Chemical Research & Licensing Co., No. 85-00210-H1-5, (S.D. Tex. Nov. 13, 1986) (Jones, J., sitting by designation).

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are presented with a situation in which you have just two creditors fighting, there's lots of case authority to say, "send them out."

If you have a situation like Mike McConnell was confronted with in *Little Creek*,[19] where he found the only reason why they went into bankruptcy court was to dodge a state court judgment and avoid the posting of a supersedeas bond, there's a line of cases that say that constitutes bad faith, but it's really an example by example situation. It's a matter of how offended the bankruptcy judge is that these parties are in front of him or her and whether or not the judge decides that the case is one that is susceptible of reorganization.

PROF. GROSS: Would you say, then, that there is an objective test to determine whether a debtor is reorganizable? Of course, in applying that test, lots of factors must be taken into account.

JUDGE GREENDYKE: Well, it's both. It can be a subjective test or it can be an objective test. My favorite approach is to be objective about it because every debtor "is a bad guy" and they are going to give you lots of evidence about how bad the debtor is and how bad the debtor has been historically. It is very difficult to establish subjective standards and thresholds. It's a lot easier to try the case from an objective standpoint and allow the subjective evidence that comes forth to be kind of a shading on what you find objectively.

While Judge Jones ruled in *Chemical Research* probably on a somewhat subjective basis, she was looking at objective evidence on what the situation was in front of her to make that determination. So, yes, I guess the first approach is objective and then I would allow the subjective evidence to just sort of help you make your decision.

PROF. GROSS: And Judge Greendyke, you also seem to be looking at this issue by categorizing types of cases: single asset cases which are on the eve of foreclosure, single asset cases which are two-party disputes, and . . .

JUDGE GREENDYKE: — the new debtor cases that we mentioned.

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[19] Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (*In re* Little Creek Dev. Co.), 779 F.2d 1068 (5th Cir. 1986).

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PROF. GROSS: Or the new debtor syndrome. In essence, you are lumping single asset cases into various discrete categories.

JUDGE GREENDYKE: Well, the lawyers are going to want to lump them in categories. I guess to a certain extent they are susceptible to some type of categorization. Again, each one is usually so different that it's not fair to the parties to lump them entirely into one group.

JUDGE HILLMAN: The judges in the District of Massachusetts started with *Little Creek* and then developed a list of 14 characteristics. The best place to find it is *In Re Village Green Realty Trust,*[20] which is a Judge Gabriel decision in 1990, and he lists fourteen factors, which I can either read to you, or I can put them in a footnote, however you want to handle it, but they are there.[21]

Now, what most of us seem to be doing with that list is you count up how many of the fourteen they have hit and if they hit enough, they move.

PROF. GROSS: Would seven or more satisfy the test?

JUDGE HILLMAN: I don't know. In *In re* Thane,[22] which I decided about four or five months ago, I said that ten out of fourteen did it.

JUDGE GREENDYKE: But it's not fair to you on a case-by-case basis to have to set a limit like that to say that it needs to be more than fifty percent. If the case is so egregious, if you will, that one factor outweighs all the others, you just need to consider all the remaining factors or to look at their potential application to make sure of your decision. It is appropriate to give different weight to the various factors.

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[20] 113 B.R. 105 (Bankr. D. Mass. 1990).

[21] *Id.* at 115-16. List of fourteen characteristics: Debtor has few or no unsecured creditors, previous filings, pre-petition improper conduct; the petition effectively allows the debtor to evade court orders, few debts to non-moving creditors; the petition was filed on the eve of foreclosure; the foreclosed property is the sole or major asset; the debtor has no ongoing business or employees, no possibility of reorganization; the debtor's income is not sufficient to operate; no pressure from non-moving creditors; reorganization essentially involves the resolution of a two-party dispute; a corporate debtor was formed and received title to its major assets immediately prior to filing; and/or the debtor files solely to create the automatic stay. *Id.*

[22] 143 B.R. 310 (Bankr. D. Mass. 1992).

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JUDGE FENNING: I think that laundry list includes pretty much every factor that we look at, but it doesn't tell you what's enough, and that's the hard case. We have inexperienced counsel coming in sometimes arguing dismissal for bad faith filing simply because the case was filed on the eve of foreclosure. Our response is, "Every real estate case is filed on the eve of foreclosure." So by itself, unless we are told that real estate doesn't belong in bankruptcy, that is not enough to make this a bad faith filing. There's no magic formula.

PROF. GROSS: Well, Judge Fenning, do you have an approach that you or your district take?

JUDGE FENNING: Well, the "new debtor syndrome" cases do not last long in our district, but we don't see that many of them filed by experienced bankruptcy lawyers because they know there is no point. You are going to be out of court at the first hearing and probably damage your reputation in the process as a lawyer for filing such a case.

The marginal bad faith cases that we get tend to be somewhat more complex than that. Debtors try and use excuses about how well they really can formulate a plan, if only the following fifteen things happen but most of which would require a miracle.

But as I said, we usually are not litigating the bad faith issue. The bad faith is normally present in our cases as a back drop to relief from stay as an additional factor for relief from stay, or as an additional reason to deny confirmation of the plan, rather than as a free-standing justification to dismiss the case.

Dismissal of a case requires notice to all the creditors and sometimes it's a lot easier to file a motion for relief from stay with a more restrictive notice list under 4001 and get out on relief from stay and not worry about the procedural problems of dealing with a motion for dismissal.

JUDGE MARK: In the 11th Circuit we have the authority of several decisions. Most recently and one most often cited is *In re Phoenix Piccadilly*,[23] which is a 1988 case, which sent shock waves through the debtor bar because in that case the court said even if the debtor has equity in the property, bad faith dismissal may be appropriate.

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[23] 849 F.2d 1393 (11th Cir. 1988).

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As applied, it hasn't expanded the law greatly, but as a result, we have this shorter laundry list than the District of Massachusetts, with largely the same kind of criteria. The debtor has one asset, few unsecured creditors and their claims are small in relation to the mortgage, few employees, foreclosure action, essentially a two-party dispute which is pending in the state court and the timing evidences an intent to delay or frustrate the creditors.

It's interesting, because the older 11th Circuit authority cases, such as *In re Natural Land Corporation*[24] involved the "new debtor syndrome" and I think the whole concept of bad faith came about in these new debtor cases that were really egregious, but in the 11th Circuit it is now argued and applied in the typical single asset real estate case.

As far as how it's applied, though, in this type of test, most of the judges, with varying degrees of flexibility, still look at the feasibility of reorganization as a very important factor. You find, for example, that Judge Paskay dismisses a lot on bad faith grounds, but also has published cases where he has denied bad faith motions or stay relief motions at the outset because there is some possibility of reorganization.

JUDGE GREENDYKE: That brings in an interesting question. In a lot of instances when you go through the checklist, you will find many of the factors are satisfied, but that there's a smell somewhere that the debtor has got something to work with. Do you all do anything to manage those cases like requiring, for instance, a capital infusion prior to the time of the disclosure statement hearing, in order to assess -- condition the case on proof of some sort of viability? If, indeed, the main argument is this debtor is a dead duck and it won't work, do you say to the debtor or its principals, I am going to find this, unless you can disprove it by coming up with the money to make the deferred improvements or to meet the deferred maintenance costs in the form of a deposit. Do you ever do anything like that?

PROF. GROSS: There is another way of asking that question. How much time do you give a debtor to make the showing that it is feasible that it will file a plan? For me, one of the differences between the good faith standard in the plan context and the implied good faith standard is that of timing. The issue ostensibly comes up later in the plan context but with implied good faith, the issue comes up right on filing. So, there is a critical timing issue in determining good faith.

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[24] Natural Land Corp. v. Baker Farms, (*In re* Natural Land Corp.), 825 F.2d 296 (11th Cir. 1987).

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JUDGE MARK: Well, I have a procedure I have used in three or four cases and it's, I guess, a carryover of giving debtors rope to hang themselves, which I liked to do when I did creditor work before I was appointed. But if you find in a typical case that meets these basic criteria the issue becomes what does a debtor have to show to establish that there's a feasible reorganization. If the debtor hasn't gotten a judgment yet, typically stay relief, at least through the point of judgment, is given. There's usually not a lot of argument against that in these cases, but if it's a case where they already have a judgment and it's a question of delaying the sale, we put them on an extremely fast track where they may have 20 days to file a plan. We'll expedite the hearing on the disclosure statement and I, rather than hearing a lot of happy talk at the first hearing on the motion to dismiss as to what they are going to do, I will say file your plan and at the disclosure hearing, which we are going to have in 10 or 15 days after you file your plan, we'll have a further evidentiary hearing on the motion to dismiss and you will have to put on a prima facie case that your plan is feasible at the disclosure hearing. Not for disclosure purposes, because it doesn't really fit in for disclosure. What I like to see is the feasibility of an actual plan, not just what they think they are going to do. And that may mean putting up money. If they are going to put in new money to try and reorganize, that will mean putting up money.

PROF. GROSS: So the burden of proof for you, Judge Mark, is on the debtor to prove good faith as opposed to on the creditor to prove bad faith?

JUDGE MARK: I think that overstates it a bit. I think once the case fits what we use as a shorthand sort of the *Phoenix Piccadilly* mold in the 11th Circuit; it has these criteria. They have gotten a judgment. It's a two-party dispute. Conceptually, if you still believe there is some purpose to Chapter 11 for equity versus mortgagee, and you are giving them some chance, the burden shifts, I guess, for them to prove that there is a feasible plan and to prove it quickly in order to stave off complete stay relief or dismissal for bad faith.

JUDGE HILLMAN: It may be that this entire process we have been discussing is nothing more than factors you look at when you come

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to a *Timbers*[25] decision. How are we going to get there? What are the evidentiary matters that are involved in reaching a *Timbers* decision?

JUDGE GREENDYKE: I think it's probably more akin to a jurisdictional question. Once the issue is raised, it's going to be the debtor's burden to prove its entitlement to remain in court. If a creditor shows or if I find in the context of just a review of the documents that there is some question as to whether or not the jurisdiction is being abused because of lack of good faith, it's the debtor's burden and obligation to prove and continue to prove it's entitled to be here. And that's how I support my sua sponte motion to make the debtor do something like what you all suggested such as speeding up the discovery and disclosure process and confirmation process.

JUDGE FENNING: Under section 362, it's the debtor's burden to establish feasibility of the plan and, to the extent that incorporates a good faith standard, the burden is with the debtor. To put that at issue on a motion for relief from stay at the beginning of the case, the creditor has to come forward with sufficient evidence to establish a prima facie case that the debtor can't meet the confirmation standard. That forces the debtor to make its showing earlier in the case than it might otherwise, but whenever raised, good faith is fundamentally the debtor's burden.

I often put single asset cases on a very short leash, though not as short as Judge Mark does, for a plan and disclosure statement. If it appears clear that capital infusion is necessary, I require a showing that the capital will be available. Sometimes I require that money be posted before the confirmation order under Bankruptcy Rule 3020.

PROF. GROSS: Does it strike any of you as the least bit odd that we screen bankruptcy filings on what we could call an abusive process standard that is higher than the standard that is applied *outside* of bankruptcy for ordinary civil litigation?

JUDGE GREENDYKE: Well, if you became aware of a Rule 11 violation, we probably are obligated to go ahead and do something about it. I don't think there's a fair analogy outside of bankruptcy court, unless you have a multiple filer, pro se litigant, or something like that. I just don't think there are very many analogies in plain old civil litigation.

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[25] United States Sav. Assoc. of Texas v. Timbers, 484 U.S. 365 (1988).

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JUDGE FENNING: In state court you have demurrers right away. There are equivalents elsewhere.

JUDGE MARK: But in the run of these typical cases, and where I put them on a very short fuse is where they filed on the day or the day before the sale and the sale has been canceled. In Florida, that means at least a 30-day delay. So the mortgagee is losing at least a month and the question is how much time -- how much extra time are they going to get by filing a Chapter 11, if any?

And I don't think we are setting a tougher standard than the state court. In these cases they have already lost in state court. Those of us who give them some time and have some flexibility still recognize there is a legitimate purpose and right to file a single asset Chapter 11 case, even if you have exhausted your remedies in state court, but you better be prepared to do something meaningful very quickly.

DO STANDARDS OF GOOD FAITH IN SINGLE ASSET CASES DIFFER FROM OTHER CASES UNDER THE CODE?

PROF. GROSS: Let me ask all of you the following: are the standards for good faith in a single asset real estate Chapter 11 case any different from the standards for good faith in any other Chapter 11 case or any other chapter of the Code for that matter? In other words, is this standard that you have been articulating unique to single asset Chapter 11 cases or is it one you would apply to the panoply of good faith issues that are raised in all sorts of other cases and contexts?

JUDGE FENNING: I don't think it's unique to single asset cases. The only difference is that we all have a lot of experience with repetitive fact patterns in single asset filings that permit us to draw inferences and see patterns much more readily than, say, in a manufacturing company case. I think the basic standard is the same.

PROF. GROSS: Do the rest of you share Judge Fenning's view that it is the same basic good faith standard for the Chapter 11 that involves mass torts, or the Chapter 13 filed to get rid of claims that would be

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dischargeable in a Chapter 7 case or the Chapter 7 case that is filed to get rid of a state court defamation judgment that you didn't like?[26]

JUDGE HILLMAN: In a broad sense.

JUDGE GREENDYKE: I agree. I think the standards almost have to be the same. It's just that Chapter 11 single asset cases are so much different than any other fact pattern. I do not think it is a helpful question or comparison.

JUDGE MARK: I would disagree, in part. In the 11th Circuit, as the law developed and as it's been applied, and this goes back to the objective versus subjective analysis of a debtor's filing. I have looked debtor principals in the eye and said, I am not saying you are a bad person. I am not finding that you are evil or that are acting subjectively in bad faith, but objectively, under these criteria, you are gone in shorthand.

JUDGE FENNING: I have been known to say that, too.

JUDGE MARK: So to go back to your question, I don't think that it's necessarily in terms of bad faith or absence of good faith in other sections of the Code where you may be focusing more on actual proof of bad intent, which we don't really need to find in the 11th Circuit under the *Phoenix Piccadilly* test.

PROF. GROSS: The reason I raised this whole line of inquiry, and it may not be one with which you all agree, is that there are cases involving individual debtors as opposed to corporate debtors where the good faith issue is raised early and then the courts say you ought to be *much more* reluctant to dismiss those cases initially on an implied good faith standard since the philosophy of the Code is to let people have access to the system in the first instance.[27] The Courts go on to say, at least in the context of a Chapter 13, that good faith can be raised later in the context of the plan — where good faith is specific.[28] What seems to be said here about single asset real estate

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[26] *See supra* notes 4-5.

[27] *See In re* Love, 957 F.2d 1350 (7th Cir. 1992); *In re* Ristic, 142 B.R. 856 (Bankr. E.D. Wis. 1992); *In re* King, 131 B.R. 207 (Bankr. N.D. Fla. 1991); *In re* Powers, 135 B.R. 980 (Bankr. C.D. Cal. 1991).

[28] 11 U.S.C. § 1325(a)(3).

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cases is the opposite: don't be skeptical initially; make the judgment about good faith early, if you can and dismiss cases early if necessary.

JUDGE HILLMAN: I think that should be the same rule in any case. If you can make the determination early, what is the point of waiting until confirmation, when you can tell two weeks into the case that this is a sick puppy that's not going to make it?

JUDGE MARK: In the context, though, it's different. For example, in the Chapter 13, you might have an individual that files a 13 on the eve of the foreclosure sale and with few unsecured creditors, but in a 13, because it's got special rights, they can have a feasible plan. So I would have to find some real abuse and subjective bad faith to knock out a 13 early before we had a chance to really analyze the facts and the trustee had made his recommendations on the feasibility of curing the arrearage.

So you have suddenly a new bundle of rights in a 13 that you don't really have in an 11. There are different rights in 11 than you have in state court obviously, but the context, I think, does affect how you look at the good faith issue.

MR. GREENDYKE: I don't think it's the same. I agree with what you are saying. I don't think there's the same need for a judge to monitor 13's or 7's. You have trustees in both those cases and they are watching, and they are on a much quicker fuse — a quicker time track than the 11's are in large part. I can remember years ago actively looking at the 11's to try and find cases I thought were susceptible to a bad faith attack, cases in which we had new businesses or undeveloped real estate, cases that really needed to be looked at and managed actively by me — that's just a different approach than we take in 13's.

JUDGE FENNING: I guess I have a slightly different perspective. This is not the major bad faith issue in the Central District of California. Our principal bad faith problem is with a huge volume of Chapter 7's and 13's being filed solely to avoid eviction from a residential tenancy where an unlawful detainer judgment has already been entered in state court.

I haven't put that in the hopper as a single asset real estate case because they don't have any interest in real property, strictly speaking. It's a different category that's more predominant unfortunately in our jurisdiction than anyplace else for a variety of reasons. We examine the "unlawful detainer" cases very closely and if they fit a prima facie bad faith pattern, we

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grant relief from stay or dismiss them immediately. So our "unlawful detainer" consumer cases are on a far shorter leash than single asset real estate cases.

I don't mean to imply that I am currently confirming a lot of Chapter 11 plans for single asset real estate cases. They are not living that long in our jurisdiction at the moment, at least not in my courtroom, because there's no equity in any of these properties and they have no way of repaying the debt or refinancing, given the fact that the bottom has fallen out of our real estate market.

So single asset cases are mostly history on the first relief from stay motion. A few survive, but most of them don't get past relief from stay because there is no equity and no prospect for successful reorganization.

WHAT IS DIFFERENT ABOUT SINGLE ASSET CASES?

PROF. GROSS: Let me play devil's advocate for a minute here. Why is it that these single asset cases where a debtor is seeking to rework secured debt any different than any other Chapter 11 where a debtor is trying to basically restructure its secured debt? Why are these particular cases being "singled" out for singular treatment as abusive?

JUDGE MARK: I don't think it's implied that they necessarily are. I like what Bill said earlier, that it's a matter of how far forward you push the analysis of the feasibility of a plan of reorganization. It's easy to say why they are different in terms of restructuring debt.

Well, they are not if they can come up with something in the way of a plan, a feasible plan to restructure the debt. What has caused the courts to look at these early cases is that many of them are simply filed to delay the foreclosure sale and there is no prospect of restructuring the debt.

It is somewhat complicated in courts, including mine, where the possibility of a new value, strip-down plan exists, even where there is no equity. That is a possible argument, even in a no equity case, that a feasible plan is possible, however I don't think we are saying single asset debtors don't have an opportunity to restructure. I think we are saying if certain criteria exists, particularly in the 11th Circuit, you have to come to the table very quickly with how you are going to do it.

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PROPOSED LEGISLATION

PROF. GROSS: Let me change gears here. As everyone is aware, Congress contemplated legislation specifically to address single asset real estate Chapter 11 cases.[29] My first question is: Do you think we need a statutory fix or should we leave things as they are for case-by-case determination? And then more specifically, as you may know, the proposed legislation in essence provided a fast track for Chapter 11 single asset real estate cases. The legislation contemplated permitting a stay to be lifted to go up to the point of sale in the context of foreclosure, and then allowed for the plan process to be sped up.[30] And, if it didn't speed up or if payment wasn't made to a secured creditor, then the legislation allowed the stay to be lifted and foreclosure to conclude.[31] So my question is: Do you think we need legislation, and if so, what is your view as to what that legislation should be?

JUDGE HILLMAN: I say, first of all, we don't need it. What it's addressing is the attitude of a number of judges that you don't get relief from stay right away. There is one judge who says to me repeatedly, you have to try three times before I grant relief from stay.

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[29] S. REP. No. 279, 102d Cong., 2d Sess. (1992).

[30] S. 1985, 102d Cong., 2d Sess § 211 (1992). The section provides in pertinent part:

> With respect to a stay of an act against real property under subsection (a), if the property is single asset real estate, and the debtor has not, within 90 days after the filing of a petition under section 301 or section 302 of this title, or the entry of an order for relief under section 303 of this title, filed a plan of reorganization which has a reasonable possibility of being confirmed within a reasonable period of time, or the debtor has commenced payment to the holder of a claim secured by such real property of interest on a monthly basis at a current fair market rate on the value of the creditor's secured interest in such property. The court may extend such 90-day period only for cause and only if an order granting such an extension is entered within such 90-day period.

Id.

[31] *Id.* The section provides in pertinent part:

> Upon request of a party in interest in a case under this title in which the property of the estate is single asset real estate, the court, with or without a hearing, shall grant such limited relief from a stay provided under subsections (a)(1), (a)(3), and (a)(4) of this section, as is necessary to allow such party in interest to proceed during the pendency of the case under this title with a foreclosure proceeding, whether judicial or nonjudicial, which had been commenced before a petition was filed under this title, up to but not including the point of sale of such real property.

Id.

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JUDGE FENNING: Or you have to wait a year or whatever the formula is, for other judges.

JUDGE HILLMAN: Whatever it is. Those judges who are doing that now are the reason why Congress was asked to act. No matter what Congress does, those judges will still require three motions or a year before they are going to grant relief from stay. So I don't think that the proposed legislation is going to accomplish anything.

JUDGE FENNING: I think it may change some of the practices of the judges that are inclined to extend the stay forever.

JUDGE HILLMAN: You are much more optimistic than I.

JUDGE FENNING: Well, I believe that some of the judges who hold those views and don't grant relief from stay very liberally or very often and certainly not early, strongly believe that that's the job they are supposed to be doing, per Congressional direction. And this will give clear Congressional direction that that's not what they are supposed to be doing. They are supposed to move these cases up and out. And I think it would change practice for some judges. It would not change the practice in my courtroom particularly, because I take a similar approach already and a number of my colleagues do, but not all of them.

JUDGE MARK: I suspect it would slow us down.

PROF. GROSS: You are on a faster track than the legislation?

JUDGE MARK: I suspect so.

PROF. GROSS: Judge Greendyke.

JUDGE GREENDYKE: I don't think there is any need for legislation. Without getting into other subjects, I think there are a lot of other things that need fixing besides this. I think the case law on good faith works fine and we in Texas have worked with it. Massachusetts clearly has. California has known a long time how to do it.

You are never going to iron out the differences between judges and how they practice the art of judging bankruptcy law. I just think there are

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other things that Congress needs to spend its time doing besides worrying about bankruptcy cases.

PROF. GROSS: One thing that this legislation *would* do is that it would mean that it is not, per se, bad faith to file a single asset Chapter 11 real estate case.

JUDGE HILLMAN: It doesn't say that at all.

PROF. GROSS: You don't think so?

JUDGE HILLMAN: No.

PROF. GROSS: You think you could still raise the bad faith, good faith debate if this proposed legislation were in place?

JUDGE HILLMAN: Certainly.

JUDGE FENNING: It's clear from the legislative history currently that it's not per se bad faith to file a single asset real estate case. There's discussion about contemplation of single asset real estate filings. It's not a per se situation. You have to have a whole list of different kinds of factors even now.

JUDGE GREENDYKE: I agree, you would have to question the ability of many portions of section 365 if we were to get rid of single asset real estate cases.

JUDGE FENNING: I don't think it would be a good idea to get rid of single asset cases. They are a good check on the system in many states that allow creditors to just jump the gun on foreclosures where it's really not warranted. I would not favor an elimination of single asset cases. It would help, however, if there were clear standards about what constitutes confirmability for a plan. Then debtors would not have to play Russian Roulette on assignment of judges. Currently, the luck of the draw on judges can determine case outcome: some judges would let the debtor confirm this plan, but the next judge down the hall wouldn't. I think that clear standards for confirmability would simplify the single asset problem enormously and reduce the litigation.

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JUDGE HILLMAN: You are right into the cram down classification issues where there is such diversity between judges. In my district people deliberately file in the Western Division because they like Judge Queenan, as opposed to the Boston judges, who have different views of classification.

JUDGE GREENDYKE: That's what circuit courts are for.

JUDGE FENNING: But the circuit courts aren't getting the cases. Because of the appellate structure in bankruptcy, the appeals are not getting as far as the circuit courts. District court and bankruptcy appellate panel decisions are not controlling precedent in most districts and therefore you don't have clear controlling precedent telling us what to do.

Now, if the Supreme Court had agreed to decide *Bryson* or *Greystone*, a clear ruling would have simplified this whole issue enormously. If the parties knew what ball park they were playing in, knew that, yes, these plans are confirmable under these circumstances, or, no, they are never confirmable where there is no equity, then it would simplify single asset filings, and eliminate a lot of them. The parties would work it out before coming to court because they would know what would happen to them with a reasonable degree of predictability without filing bankruptcy.

Forum Shopping In Good Faith Cases

PROF. GROSS: Do you think there is forum shopping as to the good faith issues? Are people choosing where to file, to the extent they can on what a court's reaction will be to their filing?

JUDGE FENNING: Oh, yes. The variance among the judges is so considerable that to the extent debtors can choose, they are choosing.

JUDGE GREENDYKE: I think they will forum shop for anything — for attorney's fees, for docket loads.

JUDGE FENNING: Extensions of exclusivity.

JUDGE GREENDYKE: I think that's true.

JUDGE HILLMAN: Well, the flexibility exists. People look and see what the odds are.

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PROF. GROSS: There is a recent article by two law professors, Lawrence Ponoroff and Stephen Knippenberg,[32] who suggested that this good faith debate is really quite misguided and that what we are really talking about is a discussion of how we feel or how we believe that bankruptcy law should function.[33] What Professors Knippenberg and Ponoroff are really saying is that this whole discussion is really a debate about bankruptcy policy, not good faith. I'd like your view as to whether or not what we are really talking about is what is the role and function of bankruptcy law or the role and function of a Chapter 11. Alternatively, are we talking about a much narrower issue — good faith?

JUDGE MARK: I think there's policy issues here. The *Phoenix Piccadilly* case I have talked about in the 11th Circuit is applied more readily by some judges than others to knock out single asset cases. When applied in the extreme, I think it does get into almost a policy decision by judges that Chapter 11 shouldn't be used by equity when it's just equity against a secured creditor. But I think other than when applied in the extreme, I still believe most of us that deal with these single asset cases and put them on a short fuse or require a quick showing that there is a reorganization that's feasible are consistent with what I believe to be the policy of allowing single asset cases to be filed and giving them a chance to reorganize. Again, it's just a matter of timing.

SANCTIONS FOR GOOD FAITH

PROF. GROSS: If there is a finding of bad faith, do you think that sanctions are warranted and if so, what should the range of those sanctions be and against whom should they be brought?

JUDGE HILLMAN: It depends upon the circumstances. There is no hard and fast rule. I have denied sanctions in cases where there was a possible basis for the filing, even though I didn't accept it.

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[32] Lawrence Ponoroff & F. Stephen Knippenberg, *The Implied Good Faith Filing Requirement: Sentinel of an Evolving Bankruptcy Policy*, 85 N.W. U. L. REV. 919 (1991).

[33] *Id.* at 973-974.

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DEF02284

JUDGE GREENDYKE: I think that sanctions are clearly warranted upon a finding of bad faith. The most obvious and appropriate sanction is dismissal of the case. Beyond that, and recognizing that bankruptcy judges arguably do not have the jurisdiction to impose criminal contempt or punitive sanctions, compensatory sanctions in the form of costs and attorneys fees are frequently warranted and granted. The debtor is most often the one against whom the sanctions should be awarded, however, in appropriate circumstances and given the right amount of culpability and/or knowledge, debtor's counsel can and should be held liable for sanctions.

JUDGE FENNING: A finding of "bad faith" would require, in my view, compelling evidence of "subjective" bad faith. Merely filing a Chapter 11 to delay a foreclosure is not bad faith. If the debtor happens to get a sympathetic judge, a confirmed plan may result. Another judge might grant immediate relief from stay or dismiss the case. The uncertainty of the legal standards and the wide variation among judges preclude sanctions in the typical case under "objective" Rule 9011 standards.

"Subjective" bad faith may, of course, exist in single asset real estate cases, just as in any other type. The filing of the Chapter 11 case may be part of an active scheme to defraud creditors. If proven, such factors justify Rule 9011 sanctions. Whether both the debtor and the attorneys should be sanctioned depends upon the circumstances.

After seven years on the bench, I have concluded that litigating a "bad faith" filing claim and imposing sanctions is unproductive. Shortly after I came on the bench, I did fully litigate such a case, entering an order of dismissal on grounds of bad faith and imposing sanctions on both party and counsel because of their outrageous conduct.[34] The amount of sanctions was based upon the attorney fees generated, the ability of the sanctioned attorney to pay, and the need to deter similar conduct in the future. Unfortunately, the cost of that litigation was high. If faced with a similar case today, I would probably just lift the stay for cause at the first hearing, sending the parties back to state court without imposing sanctions or litigating the "bad faith" issue. The Chapter 11 filing in such cases is usually just a side-show, and should be simply, and economically resolved.

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[34] *In re* Eighty South Lake, 63 B.R. 501 (Bankr. C.D. Cal. 1986), *aff'd*, 81 B.R. 580 (Bankr. 9th Cir. 1987).

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DEF02285

ENFORCEABILITY OF PREPETITION "BAD FAITH" AGREEMENTS

PROF. GROSS: There is one more question I would like to ask, namely, has there been some pragmatic change in how lawyers are functioning to address good faith problems? Let me present a hypothetical. Suppose a debtor and a creditor agree in a workout context that should any Chapter 11 ultimately occur, it will be deemed to be bad faith. Then, they write that into their out-of-court workout agreement. Suppose then that for any number of reasons, the out-of-court workout agreement either is not consummated or if it is consummated there is a default under it. Do you think those kinds of provisions are enforceable when the single asset Chapter 11 case is ultimately filed?

A variation on the theme is that suppose that the debtor and creditor in this context agree that if a Chapter 11 case is ultimately filed, the stay can automatically be lifted with no need for a hearing and the lender can just proceed ahead to foreclosure. Is that kind of lawyering now appropriate? Are these types of provisions enforceable?

JUDGE FENNING: I don't think it's enforceable. You are dealing with a different entity once the filing has occurred. Different parties who were not represented at the table at the time that deal was struck, namely other creditors of the estate, have an interest to be protected. Such an agreement is certainly admissible as evidence of the intent of the parties on the issue of whether the filing is in bad faith, but it would be one of several factors to be considered.

And I think it's entirely appropriate to draft agreements with recitals about the intent of the parties and all of that kind of thing as evidence that can later be used, but it's not binding on the court. Such recitals may be awfully persuasive, but they are not binding.

PROF. GROSS: But in a single asset case, where there are very few other creditors, can't you just sort of say, there aren't that many of them to be protected anyway. There may even be none.

JUDGE GREENDYKE: That may be the call. I agree with Lisa, I think it's good lawyering, but I think once the case is filed, it's sort of a public case and it becomes her call or my call as to what's going to happen to it, and I want to look at it and I want to know. The agreement may be a factor in deciding whether or not it's a bad faith filing, but it won't be a per se bad faith filing just because of the existence of this agreement.

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JUDGE HILLMAN: I want to look at what the new debtor obtained in exchange for that promise. If there was some sort of reworking of the deal that was very much in the debtor's favor and they had the benefit of that for sometime and they just couldn't go any longer and they now filed, I think I would be inclined to say, you bargained away any rights you otherwise have in 11.

JUDGE MARK: I think there's a danger in saying that you would enforce that kind of stipulation because it will immediately wet the appetite of lenders and lenders' counsel to draft it in and it is already happening in Florida as a result of a couple of decisions that really were typical bad faith dismissals, but also mentioned in passing that there were pre-petition stipulations and implied, if not directly stating, that they were enforcing those. One was the *Citadel Properties*[35] case by Judge Proctor. Another was *In Re Aurora Investments*,[36] which was Judge Paskay. The Paskay decision noting that there was a stipulation that a bankruptcy filing would be deemed to be bad faith and the *Citadel Properties* enforcing, which I think was almost dictum, pre-petition agreement for stay relief.

I don't think we can anticipate any expansion of that concept, if that concept is even really implicit in these cases, but I agree with Bill and with Lisa, that you look at that as another indication of the pre-petition misconduct or pre-petition conduct. And I have found a case where the debtor or borrower obtained a six-month extension on the eve of a judgment in the state court promising that it will sell off enough property in the development to pay you by December. If not, it will stipulate to judgment in sale.

They didn't. They filed Chapter 11. Motion to dismiss on bad faith. What is your plan? Well, now we are going to sell it off over the next four years. I say forget it. You made a deal in state court. You bought six more months. In this instance, you don't get another chance in bankruptcy to change the deal. So I think it does get into what happened pre-petition, what consideration was given for these promises, more so than just a stipulation itself.

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[35] *In re* Citadel Properties, 86 B.R. 275 (M.D. Fla. 1988).
[36] 144 B.R. 899 (M.D. Fla. 1992).

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GOOD FAITH 10 YEARS AHEAD

PROF. GROSS: As a way of concluding this discussion, let me ask the following: if you were all clairvoyant, where would you see the issue of single asset Chapter 11 real estate cases and the questions of good faith in that context ten years from now?

JUDGE HILLMAN: If we are lucky, Massachusetts will be over its depression by then.

JUDGE GREENDYKE: We'll be paying attention to something else like individual Chapter 11 cases or the Chapter 13 problems we talked about earlier involving apartments. I think we are going to work through it all. I think once Massachusetts gets rid of all their real estate cases and a couple of second timers around, it will pretty much be done — that has been our experience in Houston.

JUDGE FENNING: I guess I am with Bill, I am hoping that California is out of its real estate depression by the end of the decade. I believe that norms will develop, just as they have around the "new debtor syndrome" pattern where experienced bankruptcy lawyers have a client come to them and say I want to file this case in the Central District of California. The lawyers respond, "Look at *Victory Construction*. I won't file the case for you. It doesn't make sense. Let's do something else to deal with your problem."

It would help a lot if the Supreme Court will resolve some of the major substantive legal issues surrounding these cases, like the new value exception and the classification issues. If those are resolved, these cases will sort themselves out in the wash and they won't occupy the kind of time on our calendars anymore. A turn in the real estate market will solve 90 percent of it, of course.

JUDGE MARK: With the RTC and FDIC, after fighting like crazy to get stay relief and foreclose in bankruptcy, selling properties for 20 cents on the dollar, there are such bargain prices now being paid by the new owners that they probably won't wind up in Chapter 11. So I am --

PROF. GROSS: You are optimistic.

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JUDGE MARK: I hope that doesn't cause me to be audited again.

PROF. GROSS: On behalf of the American Bankruptcy Institute, I want to thank you all. Let me also say that, as an academic, where most scholarship is done in law review articles and those types of articles are viewed as the sine qua non of how to address legal issues, I think this type of format works remarkably well. Perhaps it is even better. So, in addition to addressing good faith, maybe we have begun a trend and have come up with a new format for how to think about legal issues.

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S. J. Beaulieu, Jr.
CHAPTER 13 TRUSTEE

433 Metairie Road, Suite 307
Metairie, Louisiana 70005
(504) 831-1313

April 1, 2004

Federal Bureau of Investigation
Attn: Wayne Horner
2901 Leon C. Simon Dr.
New Orleans, LA 70126

In re: In Re Gabriel T. Porteous, Jr & Carmella A. Porteous
Case No.: 01-12363

Dear Mr. Horner:

I am Staff Attorney for S. J. Beaulieu, Jr., Chapter 13 Trustee. This letter is to respond to a conversation of Mr. Beaulieu with one of the FBI agents earlier this month.

In January, 2004, at the request of the FBI, Mr. Beaulieu met with you and several other agents. Prior to that meeting, the FBI refused to divulge why the meeting was needed or what would be discussed at the meeting. During the meeting, it was disclosed that Mr. Beaulieu was being interviewed with respect to an ongoing investigation into the captioned Chapter 13 case and debtors' activities regarding same. Also, during the meeting, the agents discussed some allegations concerning potential bankruptcy improprieties involving debtors related to: filing the original petition with their name misspelled, undisclosed income, income tax refunds, the use of credit cards, transfers of property, and lifestyle activities that might not be consistent with the debtors' schedule "J" disclosures.

In the conversation this month, the FBI agent advised Mr. Beaulieu that he should pursue further investigation into debtors' activities in this case. However, the only allegation that the Trustee has evidence of relates to debtor's FICA tax withholding which should have stopped after the FICA withholding limits were met. The additional income to debtor was not taken into account in evaluating debtors' disposable income to fund the Chapter 13 plan over three (3) years. In Mr. Beaulieu's opinion, extending the plan at this late date to recoup the difference in disposable income would not substantially increase the percentage paid to unsecured creditors.

Regarding the other allegations, the FBI has refused to provide the Trustee with any evidence of improprieties by debtors. Since Mr. Beaulieu has no evidence to support the suspicions expressed by the FBI agents, he does not intend to take further action related to these allegations.

I am enclosing a copy of the Final Account prepared in this case. The case is currently set for a Final Account hearing on May 18, 2004, at 8:40 a.m. You may file an objection to the

PORT Exhibit 1108

Trustee's Final Account or you may provide Mr. Beaulieu with evidence of wrongdoing and same will be investigated.

If further information is required, please feel free to contact me at your convenience.

With kindest regards, I am

Sincerely,

Michael F. Adoue
Staff Attorney (Ext. 222.)

Enclosure

cc: R. Michael Bolen
United States Trustee, Region 5

United States Bankruptcy Court *Eastern District of Louisiana*	01-12363 Case Number

CHAPTER 13 TRUSTEE'S FINAL REPORT AND ACCOUNT

In re: GABRIEL T PORTEOUS JR CARMELLA A PORTEOUS 4801 NEYREY DR METAIRIE LA 70002	This case was: *COMPLETED* Final Meeting of Creditors: *8:40 AM, May 18, 2004*

S. J. Beaulieu, Jr., Chapter 13 Trustee, respectfully submits for the Court's approval a report of his administration of this estate, avers that the case has been fully administered pursuant to FRBP 5009, and prays that he be relieved of his trust. The total amount received from or on behalf of the debtor was $ 57,600.00, which was disbursed as follows:

#	NAME	TYPE	% ALLOWED	CLAIM AMT	PRINCIPAL PD	INTEREST PD
01	BANK ONE	DIRECT PAY	.00	.00	.00	.00
02	CHRYSLER FINANCIAL CORP	DIRECT PAY	.00	6,982.57	.00	.00
03	CHRYSLER FINANCIAL CORP	DIRECT PAY	.00	6,979.35	.00	.00
04	FIDELITY HOMESTEAD	DIRECT PAY	.00	109,488.96	.00	.00
05	ECAST SETTLEMENT CORP	UNSECURED	34.55	11,855.57	4,096.10	.00
06	BANK OF LOUISIANA	UNSECURED	34.55	1,910.00	659.91	.00
07	JULES FONTANA ATTY	NOTICE ONLY	.00	.00	.00	.00
08	CHASE BANKCARD SERVICES	UNSECURED	34.55	.00	.00	.00
09	CITIBANK	UNSECURED	34.55	.00	.00	.00
10	RESURGENT CAPITAL SERVICES	UNSECURED	34.55	21,227.06	7,333.95	.00
11	CITIFINANCIAL INC	UNSECURED	34.55	17,711.35	6,119.27	.00
12	CITIFINANCIAL INVESTMENT	NOTICE ONLY	.00	.00	.00	.00
13	EDWARD F BUKATY III	NOTICE ONLY	.00	.00	.00	.00
14	DILLARD NATIONAL BANK	UNSECURED	34.55	5,033.55	1,739.09	.00
15	DILLARD NATIONAL BANK	UNSECURED	34.55	597.88	206.57	.00
16	DISCOVER FINANCIAL SERVICES	UNSECURED	34.55	22,640.41	7,822.26	.00
17	AOL VISA	UNSECURED	34.55	.00	.00	.00
18	FIRST USA	UNSECURED	34.55	.00	.00	.00
19	JC PENNEY/MONOGRAM	UNSECURED	34.55	.00	.00	.00
20	MAX FLOW CORP	UNSECURED	34.55	5,386.54	1,861.05	.00
21	MAX FLOW CORP	UNSECURED	34.55	30,931.02	10,686.67	.00
22	MAX FLOW CORP	UNSECURED	34.55	29,443.71	10,172.80	.00
23	REGIONS BANK	UNSECURED	34.55	5,158.98	1,782.43	.00
25	DILLARD NATIONAL BANK	UNSECURED	34.55	251.54	86.91	.00

Paid to Trustee:	$ 3,274.29	Disbursed to PRIORITY Creditors:	$ .00
Paid to Attorney:	$ 1,750.00	Disbursed to SECURED Creditors:	$ .00
Refunded to Debtor:	$ 8.70	Disbursed to UNSECURED Creditors:	$ 52,567.01

cc: CLAUDE C LIGHTFOOT JR
STE 450
3500 N CAUSEWAY BLVD
METAIRIE LA 70002

S. J. Beaulieu, Jr.
Chapter 13 Trustee

SC00419

U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

April 13, 2004

BY FEDERAL EXPRESS
S. J. Beaulieu, Jr.
433 Metairie Rd., Suite 307
Metairie, LA 70005

Dear Mr. Beaulieu:

We are writing with regard to an April 1, 2004, letter from your staff attorney, Michael F. Adoue, to FBI Special Agent DeWayne Horner, which Agent Horner has forwarded to us. We appreciate you sharing your thoughts and concerns.

As we previously discussed, we cannot comment on the existence or nature of an ongoing investigation or share any evidence that may have been gathered in the course of such an investigation. In Mr. Adoue's letter, he identifies several subjects about which it might be possible for you to make inquiries or take other investigative steps, but, as we stated previously, we take no position as to whether you should pursue any investigation in any case before you. It is entirely at your discretion whether you choose to do so. Please feel free to contact us with any additional questions.

Sincerely yours,

Noel L. Hillman
Chief, Public Integrity Section

By:
Noah D. Bookbinder
Daniel A. Petalas
Trial Attorneys
Public Integrity Section
Criminal Division
(202) 514-1412

cc: Special Agent DeWayne Horner, FBI
NDB:jw
Typed: 04/13/04 (by NDB)
Records Section Chron.
Bookbinder (1) Petalas (1) ACTS# 200000436

SC00420

DEF02303

PORT Exhibit 1109

CIRCUIT COUNCIL
FOR THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 285

BEFORE

Torruella, Chief Circuit Judge

ORDER

ENTERED: May 25, 2000

Complainant has filed a complaint of misconduct under 28 U.S.C. § 372(c) against two district judges in the First Circuit. Complainant alleges that the judges maliciously prosecuted complainant and coerced complainant into submitting a plea of guilty on an allegedly unsupported criminal charge over 20 years ago.[1]

First, complainant alleges that the judges conspired to conceal facts that, if known, would have resulted in dismissal of an additional criminal charge against complainant for threatening to harm the son of business man with whom complainant had had contact. At the time of the alleged misconduct, one of the judges had not yet been appointed to the bench but was an Assistant United States Attorney involved in the case. Complainant asserts that the indictment was based upon false information contained in a newspaper article complainant encloses and that both judges knew the information in the article was false. Complainant concludes that the judges effectively coerced complainant into pleading guilty because the wrongfully added charge carried a far longer

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[1]The complaint is also directed against an Assistant United States Attorney. The complaint procedure provided for by the misconduct statute, see 28 U.S.C. § 372(c)(1). and the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability authorize complaints only against "judges of the Court of Appeals for the First Circuit and district judges, bankruptcy judges, and magistrate judges of federal courts within the circuit." Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, Rule 1(c). Therefore, complainant's allegations of misconduct by the Assistant United States Attorney are not addressed herein.

PORT Exhibit 1111 (a)

prison sentence than the other charges for which complainant allegedly would have chosen to stand trial. Complainant includes the allegedly erroneous newspaper article describing complainant's arrest; a partial order of the U.S. Court of Appeals for the First Circuit issued in the case; and miscellaneous correspondence between complainant and several government offices regarding the alleged misconduct.

First, complainant's allegations of misconduct against the first judge arose when the judge was an Assistant United States Attorney, approximately 10 years before the judge was appointed to the federal bench. The misconduct statute, 28 U.S.C. § 372(c)(1), provides a procedure for alleging that a "circuit, district, or bankruptcy *judge*, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts..." [emphasis added]. "The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when *judges* have engaged in conduct that does not meet the standard expected of federal judicial officers..." Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, Rule 1(a) [emphasis added]. Therefore, the complaint against this judge is dismissed as not in conformity with the requirements of the statute. See 28 U.S.C. § 372(c)(3)(A)(i). In addition, the allegations of conspiracy and coercion by this judge are unsupported and are also dismissed as frivolous. See 28 U.S.C. § 372(c)(3)(A)(iii).

The allegations against the presiding district judge arose during the course of a criminal proceeding approximately 20 years ago. The judicial misconduct procedure is intended to address a current or recent problem in the administration of justice. "Complaints should be filed promptly... A complaint may... be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts." Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, Rule 1(d). As the allegations against this judge arose many years ago and do not reflect a current or recent problem in the administration of justice, they too are dismissed as not in conformity with the requirements of the statute. See 28 U.S.C. § 372(c)(3)(A)(i).

Further, the allegation that the presiding district judge wrongfully accepted complainant's guilty plea arises from judicial orders entered during the course of the criminal proceeding. "The complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case... Only a court can do that." Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, Rule 1(e). Accordingly, the allegations against this judge are dismissed as directly related to the merits of a decision or procedural ruling. See 28 U.S.C. § 372(c)(3)(A)(ii).[2]

Finally, complainant presents no evidence that the presiding judge participated in a conspiracy or other wrongdoing in connection with complainant's prosecution. Therefore, the allegations against this judge are also dismissed as frivolous. See 28 U.S.C. § 372(c)(3)(A)(iii).

Consequently, the complaint is dismissed as not in conformity with the requirements of the statute, see 28 U.S.C. § 372(c)(3)(A)(i), as directly related to the merits of a decision or procedural ruling, see 28 U.S.C. § 372(c)(3)(A)(ii), and as frivolous, see 28 U.S.C. § 372(c)(3)(A)(iii).

Chief Judge Torruella

[2]The record shows that complainant, in fact, successfully challenged the court's acceptance of his guilty plea on appeal. The First Circuit Court of Appeals held that the district court erred in denying complainant's motion to vacate his sentence on the ground that his plea had been accepted in violation of Rule 11 of the Federal Rules of Criminal Procedure. Therefore, the legal issue arising from the court's acceptance of complainant's plea was decided in complainant's favor almost twenty years ago.

CIRCUIT COUNCIL
FOR THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 285

BEFORE

Selya, Boudin, Stahl, Lynch, Lipez, Circuit Judges
Hornby, Zobel, DiClerico, Casellas, Lagueux, District Judges

ORDER

ENTERED: SEPTEMBER 8, 2000

Petitioner, a litigant, has filed a petition for review of Chief Judge Torruella's dismissal of his complaint of misconduct under 28 U.S.C. § 372(c) against two district judges in the First Circuit.[1] The complaint alleged that the judges maliciously prosecuted petitioner and coerced him into submitting a plea of guilty on an allegedly unsupported criminal charge over 20 years ago. Petitioner asserted that the indictment on this criminal charge was based upon false information contained in a newspaper article and that both judges knew that the information in the article was false. Petitioner concluded that the judges effectively coerced him into pleading guilty because the wrongfully added charge carried a far longer prison sentence than the other charges for which petitioner claimed he would have chosen to stand trial.

As petitioner's allegations of misconduct against the first judge arose approximately 10 years before the judge was appointed to the federal bench, this judge was involved in petitioner's case only as a federal prosecutor. The allegations against this judge were dismissed as not in conformity with the requirements of the statute. See 28 U.S.C. § 372(c)(3)(A)(i).

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[1]The complaint was also directed against an Assistant United States Attorney. Because the misconduct statute authorizes complaints only against federal judges, the allegations concerning the United States Attorney were not addressed in the order of dismissal. See 28 U.S.C. § 372(c)(1), and the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, Rule 1(c).

As the allegations against the second judge arose during the course of a criminal proceeding over which the judge presided approximately 20 years ago, they were dismissed as not in conformity with the requirements of the statute. See 28 U.S.C. § 372(c)(3)(A)(i); see also Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, Rule 1(d) ("Complaints should be filed promptly... A complaint may ... be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts."). Further, the allegation that the second judge wrongfully accepted petitioner's guilty plea arose during the course of the criminal proceeding. Accordingly, this allegation was also dismissed as directly related to the merits of a decision or procedural ruling. See 28 U.S.C. § 372(c)(3)(A)(ii). Finally, because petitioner presented no evidence that the second judge participated in a conspiracy or other wrongdoing in connection with petitioner's prosecution, these allegations were also dismissed as unsubstantiated. See 28 U.S.C. § 372(c)(3)(A)(iii).

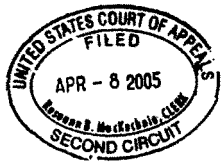
In the petition for review, petitioner basically reiterates the original allegations, but includes a copy of the district court decision in which the court granted petitioner's motion for dismissal of the indictment after the case was remanded by the Court of Appeals. The petition for review contains no argument or evidence in support of his claim of judicial conspiracy or other misconduct that was not appropriately disposed of by the Chief Judge's order of dismissal. We therefore affirm that order for substantially the same reasons as set forth by the Chief Judge.

The order of dismissal is affirmed.

Vincent F. Flanagan

Vincent F. Flanagan, Secretary

ORIGINAL



THE JUDICIAL COUNCIL OF
THE SECOND CIRCUIT

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In re
CHARGES OF JUDICIAL MISCONDUCT.

No. 04-8529
No. 04-8530
No. 04-8541
No. 04-8547
No. 04-8553

Memorandum and Order

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B e f o r e:

The Judicial Council of the Second Circuit.

In June, July, August and September 2004, five complaints of judicial misconduct were filed against a circuit judge of this Circuit ("the Judge") pursuant to 28 U.S.C. § 351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers ("the Local Rules").

Pursuant to 28 U.S.C. § 353(a) and Local Rule 9, Acting Chief Judge Dennis Jacobs (designated following the recusal of Chief Judge John M. Walker, Jr.) appointed a special committee to investigate the allegations in the above-referenced complaints. The special committee ("the Committee") consisted of the Acting Chief Judge, Circuit Judge Joseph M. McLaughlin, and District Judge Carol B. Amon of the Eastern District of New York. Michael Zachary, a supervisory staff attorney for the Court of Appeals, was appointed counsel to the Committee pursuant to Local Rule 10(c). The Committee submitted a report to the Judicial Council of the Second Circuit, pursuant to 28 U.S.C. § 353(c) and Rule 10(e) of the Local Rules. The report was based on a

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Council of the Second Circuit, pursuant to 28 U.S.C. § 353(c) and Rule 10(e) of the Local Rules. The report was based on a thorough review of the complaints, the evidence submitted by the complainants and by the Judge, the relevant canons and authorities, and responses from the Judge written at the invitation of the Acting Chief Judge.

All five complaints present one or more misconduct claims concerning the substance of the Judge's June 19, 2004 remarks at an American Constitutional Society convention event ("the ACS remarks"); one complaint further alleges that speaking at that convention, without regard to the substance of the remarks, constituted prohibited political activity; and one complaint further alleges misconduct inferred from certain statements alleged to have been made by the Judge's wife at a May 23, 2004 political demonstration at Yale University.

I

The ACS remarks at issue were made after a panel discussion entitled "The Election: What's at Stake for American Law and Policy." The Judge spoke from the floor as a non-panelist. The remarks and context are as follows:

> Okay, I'm a judge and so I'm not allowed to talk politics and so I'm not going to talk about some of the issues which were mentioned or what some have said is the extraordinary record of incompetence of this administration at any number of levels, nor am I going to talk about what is really a difficult issue which is the education issue, which is an incredibly complicated one, which I'm glad you talked about. I'm going to talk about a deeper structural issue that is at stake in this election, and that has to do with the fact that in a way that occurred before but is rare in the United States, that somebody came to power as a result of the illegitimate acts of a legitimate institution that had the right to put somebody in power. That is what the Supreme Court did in Bush versus Gore. It put somebody in power. Now, he might have won anyway, he might not have, but what happened was that an illegitimate act by an institution that had the legitimate right to put somebody in power. The reason I emphasize that is because that is exactly what happened when Mussolini was put in by the King of Italy, that is, the King of Italy had the right to put Mussolini in though he had not won an election and make him Prime Minister. That

> is what happened when Hindenburg put Hitler in. I'm not suggesting for a moment that Bush is Hitler. I want to be clear on that, but it is a situation which is extremely unusual. When somebody has come in in that way they sometimes have tried not to exercise much power. In this case, like Mussolini, he has exercised extraordinary power. He has exercised power, claimed power for himself that has not occurred since Franklin Roosevelt, who after all was elected big and who did some of the same things with respect to assertions of power in time of crisis that this President is doing. It seems to me that one of the things that is at stake is the assertion by the democracy that when that has happened it is important to put that person out, regardless of policies, regardless of anything else, as a statement that the democracy reasserts its power over somebody who has come in and then has used the office to take... build himself up. That is what happened after 1876 when Hayes could not even run again. That is not what happened in Italy because, in fact, the person who was put in there was able to say "I have done all sorts of things and therefore deserve to win the next election." That's got nothing to do with the politics of it. It's got to do with the structural reassertion of democracy. Thank you.

By letter to Chief Judge Walker dated June 24, 2004, the Judge apologized for the ACS remarks:

> I write you as Chief Judge to express my profound regret for my comments at last weekend's American Constitution Society Conference. My remarks were extemporaneous and, in hindsight, reasonably could be - and indeed have been - understood to do something which I did not intend, that is, take a partisan position.
>
> As you know, I strongly deplore the politicization of the judiciary and firmly believe that judges should not publicly support candidates or take political stands. Although what I was trying to do was make a rather complicated academic argument about the nature of reelections after highly contested original elections, that is not the way my words, understandably, have been taken. I can also see why this occurred, despite my statements at the time that what I was saying should not be construed in a partisan way. For that I am deeply sorry.

> I will not take the time here to outline the non-partisan theoretical framework I was trying to develop. In retrospect, I fear that is properly the stuff only of an academic seminar. For, whatever I had in mind, what I actually said was too easily taken as partisan. That is something which judges should do their best to avoid, and there, I clearly failed.
>
> Again, I am truly sorry and apologize profusely for the episode and most particularly for any embarrassment my remarks may have caused you, my colleagues, and the court.
>
> You should feel free to share this letter with our colleagues.

Chief Judge Walker forwarded the Judge's June 24 letter to the other members of the Second Circuit Court of Appeals, with a memorandum of his own, which stated the following:

> Although [the] remarks were presented as an academic point with various historical analogies, the principal issue his remarks presents has nothing to do with the merits of what he said nor with his intent in saying them. The issue is whether his remarks could reasonably be understood as a partisan political comment. Partisan political comments, of course, are violations of the Code of Judicial Conduct. As [the Judge] has acknowledged, his remarks reasonably could be--and indeed have been--so understood, whatever his intent. He has sent me the enclosed letter, which he has urged me to share with the members of the Court.
>
> I am pleased that [the Judge] has promptly recognized that his remarks could too easily be taken as partisan and hence were inappropriate, and I urge all members of the Court to exercise care at all times, but especially in an election year, to refrain from any conduct or statements that could reasonably be understood as "political activity" or "publicly endors[ing] or oppos[ing] a candidate for public office."

The next day, the Judge's June 24 letter and Chief Judge Walker's June 24 memorandum were released to the press, with the express approval of the Judge.

II

We first consider the claim that the Judge's presence and participation at an event of the ACS is in itself a breach of ethics. Next, we consider the several claims premised on the substance of the Judge's remarks. Last, we consider the claim based on statements attributed to the Judge's wife at the Yale Protest.

A. Speaking at the ACS Conference

The complaint docketed under 04-8547 claims that, regardless of the content of the Judge's remarks, the fact that he spoke at all at the ACS convention violated the Canon 7 prohibition against political activity and making speeches for a political organization. See Canon 7(A(2)("A judge should not ... make speeches for a political organization...")). It is alleged in the complaint that the ACS is, "by definition[,] left-leaning and [has] always had a partisan mission and agenda."

The ACS describes itself on its web site, found at www.acslaw.org, as a "progressive legal organization" which seeks to counter "a narrow, conservative approach to the law" that (it asserts) "has come to dominate American law and public law." According to the web site, contributions to the ACS are tax-deductible; it "is a non-partisan, non-profit 501(c)(3) educational organization"; and it does "not, as an organization, lobby, litigate, or take positions on specific issues, cases, legislation, or nominations." A review of the various events listed on the web site supports the allegation that the ACS mission is "left-leaning," but it also reveals that speakers at the listed events appear to be from across the political spectrum.

The claim that speaking at an ACS event constitutes political activity does not withstand analysis under Canon 7. The phrase "political organization" in Canon 7(A)(2) likely refers to groups organized *primarily* for political purposes, such as political parties, rather than to groups organized primarily for other purposes, such as legal education or debate, even if there is sympathy between a particular group or its mission and partisan entities. This distinction is suggested by Canon 7(C), which states: "A judge should not engage in any other political activity [referring to activities specified in 7(A) and (B)]; provided, however, this should not prevent a judge from engaging in the activities described in Canon 4." Canon 4 in turn provides: "[a] judge may engage in extra-judicial activities to

improve the law, the legal system, and the administration of justice." Among other things permitted by Canon 4, "[a] judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice." Canon 4(A). The Commentary to Canon 4 states:

> [a]s a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge's time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Canon 4 Commentary. "[T]o qualify as a Canon 4 activity, the activity must be directed toward the objective of improving the law, qua law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective." Judicial Conference of the United States, Committee on Codes of Conduct, Advisory Opinion 93, Extrajudicial Activities Under Canons 4 and 5, ¶ 3 (1977, last revised Oct. 1998). Because "judicial participation in Canon 4 activities is actively encouraged[,] ... a judge will be given greater latitude when participating in extrajudicial activities expressly covered by Canon 4," id. at ¶ 2, but, when an activity is "politically oriented," Canon 4 activities are construed "narrowly, restricting them to activities that are most directly related to the law and legal process," id. at ¶ 13.

A judge may attend or speak at an event even if it is sponsored by a group that has an identifiable political or legal orientation or bias. It does not follow therefrom that the judge is an adherent of the group's political or legal mission, or a fellow traveler. See Judicial Conference of the United States, Committee on Codes of Conduct, Compendium of Selected Opinions, § 4.5(k) (2001)("A judge who is a member of the American Bar Association is not regarded as personally supporting positions taken by the Association without the judge's involvement."); Judicial Conference of the United States, Committee on Codes of Conduct, Advisory Opinion 93, Extrajudicial Activities Under Canons 4 and 5, ¶ 12 (1977, last revised Oct. 1998)("a judge may remain a member of a bar association which takes controversial positions on policy issues so long as the judge abstains from

participating in the debate or vote on such matters in a manner in which the public may effectively become aware of the judge's abstention"). The ACS web site makes clear that various Supreme Court justices have attended and spoken at ACS events, and various panel members at the 2004 ACS convention and other ACS events stated or suggested that their political beliefs were opposed to the viewpoint attributed to the ACS by the complainants.[1] Legal organizations often invite speakers of divergent views as a means of fostering robust debate and attracting an audience. Balance in the roster of speakers or topics may be relevant to whether an event may be attended under Canon 4, but such balance is not required:

> [t]he education of judges in various academic and law-related disciplines serves the public interest. That a lecture or seminar may emphasize a particular viewpoint or school of thought does not necessarily preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to consider and analyze them. Yet, notwithstanding the general principle that judges may attend independent seminars ..., there are instances in which attendance at such seminars would be inconsistent with the Code of Conduct. It is consequently essential for judges to assess each invitation on a case-by-case basis.

Judicial Conference of the United States, Committee on Codes of Conduct, Advisory Opinion 67, Attendance at Educational Seminars, ¶ 2 (1980, last revised Aug. 2004).

The Judge's presence at the ACS event, by itself, does not bespeak sympathy or support for the mission of the ACS, or for any of the speakers or groups represented at the event, because, among other reasons, the Judge's educational activities are by no means limited to groups generally aligned to the left, as a review of web sites confirms. See United States v. Pitera, 5 F.3d 624, 626-27 (2d Cir. 1993) (judge's impartiality not

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[1] The political views of many of the speakers listed for the various events described on the web site are not apparent. However, in addition to various speakers who are well known for being politically left-of-center, there are various speakers described as present or former officials in the current presidential administration, the Republican National Committee, and organizations such as the American Enterprise Institute and the National Right to Life Committee.

reasonably questioned, for purposes of a recusal motion in criminal case, where she previously gave lecture to police/prosecutor drug enforcement task force "about steps they might take to increase the prospects for conviction in narcotics cases," in light of fact that lecture also included "several emphatic criticisms of prosecutors" and judge also participated in programs for defense lawyers and "commendably lectures to a variety of trial practice seminars").

For the foregoing reasons, the claim is dismissed.[2]

B. The ACS Remarks

The following claims based on the ACS remarks are presented in one or more of the five complaints:

1. Advocacy that the President Not be Reelected. This claim is explicitly made in one complaint and is implicit in most of the others, as most of their allegations of political bias or political advocacy rely in part on the reelection-oriented portion of the remarks.

2. Comparing the President to Hitler and Mussolini. This claim is explicitly made in one complaint.

3. Political Bias or Engagement in Political Advocacy. Aside from the reelection-related claim, four of the complaints make the more general claim that the ACS remarks, or portions of them, demonstrate the Judge's "bigotry," political bias, or political advocacy.

4. Disagreement with *Bush v. Gore*. One complaint claims that this demonstrates incompetence.

We review these claims one by one. The general political advocacy allegations will be discussed in tandem with the reelection claim, as there is significant overlap between the two claims and, in any event, the same principles apply to both. The political bias claim will be discussed separately since it

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[2] To the extent that the complainants rely on the portion of Canon 7 which proscribes a judge from "mak[ing] speeches for a political organization," Canon 7(A)(2), that portion of the Canon does not apply since the Judge was not making his remarks "for" the ACS, i.e., he was not purporting to represent the organization or actively soliciting support for it.

appears to be based on the independent, although questionable, principle that judges should not hold strong political beliefs.

1. Advocacy that the President not be Reelected.

Canon 7 states that judges "should refrain from political activity," and, specifically, that judges "should not ... publicly endorse or oppose a candidate for public office." Canon 7(A)(2). The Judge stated in his August 12, 2004 letter to Acting Chief Judge Jacobs that his remarks were reasonably understood as opposing a candidate in violation of Canon 7(A)(2). He also apologized for making the remarks, stated that he had not intended to make a partisan statement, and asserted that he has "every intention of seeing to it that such an episode does not happen again."

Under 28 U.S.C. § 354(a) and (b), when a Judicial Council finds that an Article III judge has engaged in judicial misconduct, the actions it may take include:

> Ordering that, on a temporary basis, no further cases be assigned to the judge;
>
> Censuring or reprimanding the judge by means of private communication;
>
> Censuring or reprimanding the judge by means of public announcement;
>
> Certifying disability of the judge pursuant to § 372(b);
>
> Requesting that the judge voluntarily retire;
>
> Referring the complaint, together with the record of any associated proceedings and recommendations for appropriate action, to the Judicial Conference of the United States; or
>
> If the Judicial Council determines that the judge engaged in conduct which might constitute grounds for impeachment or which, in the interest of justice, is not amenable to resolution by the Judicial Council, certify that determination to the Judicial Conference of the United States.

See 28 U.S.C. § 354(a)-(b); Local Rules 14(a)-(g) and 15. Under Local Rule 14, the Judicial Council also may dismiss claims that do not state a misconduct claim under the applicable statutes,

"conclude the proceeding" on the grounds that corrective action has been taken or intervening events have made action unnecessary, or order corrective action. See Local Rule 14(a)-(g). There is no definition of "censure" or "reprimand" or any other possible sanction in the misconduct statutes or Local Rules, or the case law and scholarly writing interpreting them. However, the use of those and related terms in the ethics rules of the United States Senate and House of Representatives provides some guidance.[3]

For the reasons that follow, the Judicial Council (a) finds that the Judge violated Canon 7 when he made the statement concerning the President's reelection, (b) concurs in Chief Judge Walker's July 24, 2004 admonition, and (c) concludes that the dissemination of Chief Judge Walker's admonition--together with the Judge's apology--and the Judicial Council's concurrence with the admonition, constitute both a sufficient sanction and corrective action.

The Commentary to Canon 1 of the Code of Conduct for United States Judges states that the question of "[w]hether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text [of the Code] and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the

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[3] Based on the ordinary meaning of those terms, and their use in the Senate and House ethics rules, "censure" and "reprimand" are deemed to be more serious sanctions than "admonishment." See Rules of Procedure of the Senate Select Committee on Ethics, 149 Cong. Rec. S2677-01 at *S2677, *S2683 (Feb. 25, 2003) (§ 2(a)((2)(B), found under "Part I: Organic Authority," and Rule 4(g), found under "Part II: Supplementary Procedural Rules")(listing as most serious sanctions for Senators: expulsion, censure, payment of restitution, and change in seniority or responsibilities; listing as less serious sanctions: reprimand or payment of restitution; listing a public or private letter of admonition as least serious sanction); Rules of the House Committee on Standards of Official Conduct, 108th Congress, 149 Cong. Rec. H2375-01 at *H2381 (Mar. 26, 2003)(Rule 24)(describing reprimand as "appropriate for serious violations," censure as "appropriate for more serious violations," and expulsion as "appropriate for the most serious violations"; a "letter of reproval" is apparently the least severe sanction). A public letter of admonition is quite obviously a more severe sanction than a letter that is private.

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improper activity on others or on the judicial system." See also Leonard E. Gross, Judicial Speech: Discipline and the First Amendment, 36 Syracuse L. Rev. 1181, 1256-61 (1986) (discussing factors to be weighed when state or federal tribunals are choosing between possible disciplinary sanctions).

In the present instance, certain factors militate in favor of imposing some type of sanction: the violation of Canon 7 was clear and serious; and the remarks were made before a large public audience, and they were widely reported by the news media. On the other hand, there are significant mitigating factors: the Judge conceded that his remarks could reasonably be understood as violating Canon 7; he stated that the remarks were not planned and that he had not intended to veer into remarks that could be construed as partisan advocacy; he apologized and gave assurances that there will be no recurrence; Chief Judge Walker's admonition and the Judge's apology were released to the public; and there was wide media coverage of that admonition and apology.

There is little in the way of published case law or other guidance concerning when censure, reprimand, or other sanction is warranted. However, in cases where censure, reprimand, or suspension was ordered, the behavior at issue was, in general, appreciably more egregious than anything alleged in the current five complaints. See Report of the National Commission on Judicial Discipline and Removal, reprinted as appendix to Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (Admin. Office of U.S. Courts 2000); Jeffrey N. Barr and Thomas E. Willging, Decentralized Self-Regulation, Accountability, and Judicial Independence Under the Federal Judicial Conduct and Disability Act of 1980, 142 U. Pa. L. Rev. 25 (1993). Cases involving allegations of improper partisan activity were "generally" resolved through corrective action. See Barr and Willging, supra, at 176. It appears that the corrective action usually took the form of the subject judge acknowledging the error or improper conduct and/or apologizing. Id. at 98, 100-01, 151-52.

We conclude that all of the purposes of the judicial misconduct provisions are fully served by: the Judge's apology; Chief Judge Walker's June 24, 2004 Memorandum; the release of that apology and Memorandum to the public; and the Judicial Council's concurrence with the admonition in the Memorandum. See id. at 106 ("the collective acts of the entire council are likely to have more credibility with complainants, the judge, and the public than the individual acts of a chief judge"). These actions constitute a sufficient sanction and appropriate corrective action.

Finally, in his June 24, 2004 letter of apology to Chief Judge Walker, the Judge suggested that his remarks were only contextually inappropriate, and that they were "properly the stuff only of an academic seminar." However, in response to the Committee's report, the Judge has acknowledged that the remarks also would have been inappropriate in an academic setting. Based on the Judge's acknowledgment, the Judicial Council concludes that no further action need be taken on that issue.

2. Comparing the President to Hitler and Mussolini.

The remarks concerning Hitler and Mussolini were cast in terms of the supposed similarity in how the President, Hitler and Mussolini gained power. However, the Judge went on to make a direct comparison between the President and Mussolini: "[i]n this case, like Mussolini, he [President Bush] has exercised extraordinary power." Under the circumstances, however, there is no need to parse these remarks. The Judge's August 12, 2004 letter to Acting Chief Judge Jacobs characterized the use of the Hitler and Mussolini examples as a mistake:

> With respect to the examples of other situations where persons came into power as a result of the illegitimate act of a legitimate body, I unquestionably would have been much wiser to limit my examples to those from American history.... My use of the appointment of Mussolini and Hitler as examples - however much it may have been a natural, off-the-cuff example for someone with my childhood, and however much I meant it as a comparison of the Supreme Court's use of its power to that of Victor Emmanuel III and Hindenburg, and not at all a comparison of President Bush to the dictators - was obviously not so reported or read. That was reason enough for me to apologize, as I have said, "profusely" and "deeply." I stand by my apology completely.

The Hitler and Mussolini analogy is contextually subsumed in the reelection remarks, which are discussed above. See, e.g., Complaint docketed under 04-8541 (describing comparison as part of "a pattern of thinly disguised political advocacy"). No incremental action is required or justified. Moreover, even if the comparison remarks are treated as independent of the reelection remarks, no incremental action would be needed for the following reasons.

Although the comparison remarks were inflammatory to a reasonable person of ordinary sensibilities, it is not clear that they constituted judicial misconduct. In the complaint docketed under 04-8547, the complainants reasonably argue that the comparisons violated the Canon 1 requirement that judges maintain, enforce, and personally observe "high standards of conduct ... so that the integrity and independence of the judiciary may be maintained." However, there is no guidance in the Canons (which are advisory in any event)--and little elsewhere--on when out-of-court remarks that may be intemperate or disrespectful transcend the merely distasteful or the inadvisable and amount to misconduct. The available cases (mostly applying state canons to state court judges) reflect that sanctions have been imposed primarily for inappropriate remarks made in the courtroom, or for inappropriate out-of-court remarks more offensive than the comparison remarks, or for repeated instances. The cases involving federal judges who made questionable remarks outside the courtroom generally were resolved through corrective actions taken either before or after the filing of misconduct complaints; however, the available descriptions of those cases do not indicate whether a finding or acknowledgment of misconduct was made in conjunction with the corrective action. See Barr and Willging, supra, 142 U. Pa. L. Rev. at 66, 76, 98, 102, 176 (discussing federal misconduct proceedings); American Law Reports Annotation, Disciplinary Action Against Judge on Ground of Abusive or Intemperate Language or Conduct Toward Attorneys, Court Personnel, or Parties to or Witnesses in Actions, and the Like, 89 A.L.R.4th 278 (1991, 2004) (discussing state and federal cases); cf. Talbot D'Alemberte, Searching for the Limits of Judicial Free Speech, 61 Tul. L. Rev. 611, 612 (1987)(describing newspaper article which had reported that a Federal Bar Association ethics expert had opined that federal judge's public statement that President Reagan was a racist "probably didn't violate judicial ethical canons prohibiting federal judges from engaging in politics").

As part of the media coverage of the ACS remarks, at least one article reported on the opinions of several law professors concerning the ethical implications of those remarks. See Josh Gerstein, Judge's 'Mussolini' Comments Violated Ethics, Critics Say, NEW YORK SUN, June 23, 2004. Professor Volokh of the University of California at Los Angeles School of Law, the only professor who distinguished between the reelection and comparison remarks, was reported as opining that the reelection remarks violated the Canon 7 prohibition against political advocacy, but that the "analogy to Hitler and Mussolini was factually inaccurate and unfair, but not a breach of ethics." Id. at last paragraph.

The Judicial Council concludes that no additional action is necessary based on the comparison language because the Judge acknowledged that the comparison was a mistake and has apologized for the ACS remarks, and because there is no precedent or authority clearly defining the comparison remarks as misconduct under the misconduct statutes or the Canons: "[m]any of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed." Canon 1 Commentary at ¶ 3.

3. General Political Bias.

The general allegations of political bias, when considered separately from the political advocacy allegations, do not state a claim under Canon 7 or the misconduct statutes. Under Canon 7, a judge is free to have a preference or bias as between political candidates, and vote accordingly, as long as he or she does not publicly advocate for or against a candidate. To the extent that any of the complaints are based on the belief that a judge must be politically neutral or hold no strong political beliefs, they are without merit. To the extent that any of the complaints are based on the belief that the Judge's alleged bias renders him unable to sit as a judge in a case involving the President or any particular issue, they are (at least) premature as any such claim would await an actual instance. The general "political bias" claims are dismissed.

4. Disagreement with *Bush v. Gore*.

Canon 3 requires federal judges to "maintain professional competence in the law." Canon 3(A)(1). Although "incompetence" may not fit comfortably within the definition of "misconduct," it is arguably "conduct prejudicial to the effective and expeditious administration of the business of the court" or (less arguably) a "mental or physical disability" within the meaning of § 351(a). In any event, even assuming that demonstrated incompetence would constitute misconduct or a disability, we dismiss this claim as meritless. As shown by the closely divided vote in the Bush v. Gore decision itself, and the numerous analyses of that decision, reasonable people disagree over the soundness of the opinions in that case. See Bush v. Gore, 531 U.S. 98 (2000). Nothing in the Judge's comments about that decision raises an issue of competence.

C. The Yale Protest.

The complaint docketed under 04-8541 cites a report by the Associated Press that, on May 23, 2004, the Judge's wife attended a protest against the President and the war in Iraq, that she said that "she was protesting on behalf of herself and her husband" (identifying him by title, court and name), and that she expressed anger about the President's veracity and conduct of the war. The complainant argues that, by failing to "publicly correct[] his wife's comments that she was protesting on his behalf," the Judge "has allowed the impression to fester that he does take partisan political stands." As with the ACS remarks claims, this claim is construed as alleging a violation of Canon 7.

Both the Judge and his wife submitted letters in response. She had "no recollection of saying that [she] was protesting on behalf of [her] husband"; "[m]ore important, [the Judge] never authorized any such statement"; and she did not "believe that [she] would have said such a thing, as [she is] well aware of [the Judge's] obligation to avoid publicly opposing or endorsing candidates for public office, and [she is] vigilant against attribution of [her] own political views to [her] husband." Finally, she stated, as did the Judge in his response, that she was unaware of the allegation until it appeared in a June 25, 2004 newspaper story, over four weeks after the protest.

The Judge observes that his wife "is well aware of [his] obligation to avoid publicly opposing or endorsing candidates for public office, ... [he has] always counseled her that she must make every effort to avoid conveying the impression that she might be speaking on [his] behalf when expressing her political views," and "[o]ver the years she has been very faithful to that admonition." In any event, the Judge emphasizes that he "did not instruct or authorize her to make any statements on [his] behalf." Finally, the Judge states that he would have attempted to correct the article had he known of it at the time it was published (though he concedes no obligation to do so), but that he first became aware of the allegation approximately a month after the protest, by which time he felt that "it was too late to make a meaningful correction."

The dispositive question is whether the Judge authorized his wife to make the alleged comments. The only direct evidence bearing on that question indicates that he did not do so. Moreover, the Judge and his wife acknowledge that the Judge must avoid publicly endorsing or opposing political candidates, either directly or through his wife, and affirm their intention to abide

by that rule.

As to whether the Judge should have corrected the Associated Press story once he became aware of it, we conclude that he had no ethical duty to do so. He became aware of the story approximately a month after it was published, and it would have been reasonable at that point to decide against reviving the story by correspondence to the editor.

The claim is dismissed for lack of evidence of misconduct.

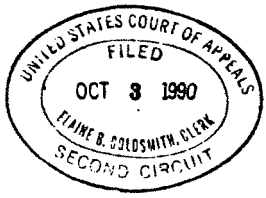
IV. Conclusion

For the foregoing reasons, the Judicial Council finds that the Judge's remarks concerning the President's reelection violated Canon 7, concurs in Chief Judge Walker's July 24, 2004 admonition, concludes that the dissemination of Chief Judge Walker's admonition--together with the Judge's apology--and the Judicial Council's concurrence with the admonition, constitute both a sufficient sanction and corrective action, and dismisses the five complaints in all other respects.

So ordered.

Karen Greve Milton, Secretary
Of the Judicial Council

Dated: April 8, 2005
New York, New York



JUDICIAL COUNCIL OF THE
SECOND CIRCUIT

In re
CHARGE OF JUDICIAL MISCONDUCT

No. 91-8500
Memorandum and Order

Before: Chief Judge James L. Oakes
Circuit Judges Thomas J. Meskill
Jon O. Newman
Amalya L. Kearse
Richard J. Cardamone
Ralph K. Winter
George C. Pratt
Chief Judges Charles L. Brieant
Thomas C. Platt
Michael A. Telesca
Franklin S. Billings, Jr.
Ellen Bree Burns
Neal P. McCurn

On January 4, 1991, the complainant filed a complaint pursuant to 28 U.S.C. § 372(c) and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (Local Rules), making allegations of improper conduct against a Bankruptcy Judge of the Southern District of New York (the "Judge"). The initial complaint consisted of the complaint form adopted pursuant to the Local Rules, a typed statement of facts, and exhibits.

By orders dated January 23, 1991 and April 29, 1991, Chief Judge James L. Oakes appointed a Special Committee (Committee) pursuant to 28 U.S.C. § 372(c)(4) and Rule 9 of the Local Rules, and notified both the complainant and the judge of its formation. In addition to the Chief Judge, the Committee includes Circuit Judges Amalya L. Kearse and George C. Pratt, Eastern District Judge Eugene H. Nickerson and District of Connecticut Judge Alan H. Nevas.

The Judicial Council of the Second Circuit has received a comprehensive written report from the above Committee.

The complaint concerns the Judge's testimony in a case over which complainant, himself a former Bankruptcy Judge, presided during his judicial tenure. The testimony was by the Judge after

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(Rev. 8/82)

he was appointed to the bench but it pertained to matters in a bankruptcy proceeding when he was a United States Trustee.

The question presented by the complaint is whether the charge that the Judge committed perjury is an allegation that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" within the meaning of section 372(c)(1). The Judicial Council agrees with the conclusion of the Committee that in the circumstances alleged by the complaint, the alleged perjury is beyond the scope of the Act. The testimony alleged to be false does not concern any aspect of the Judge's judicial duties or any aspect of his conduct during his tenure as a judge. It concerns solely matters occurring before he became a judge. As such, it is beyond the scope of the Act, for the reasons fully explained by then-Chief Judge Browning in In re Charge of Judicial Misconduct, No. 83-8037 (9th Cir. Mar. 5, 1986). We need not decide in this matter whether we would go as far as Judge Browning in disclaiming jurisdiction under the Act. Perjury is an extremely sensitive problem for the judicial system, but an allegation that a judge gave perjurious testimony in a matter unrelated to his own judicial duties and unrelated to activities occurring while he is a judge falls outside the statute authorizing disciplinary action.

Accordingly, the complaint is hereby dismissed in its entirety as outside the scope of the Act, pursuant to 28 U.S.C. § 372(c)(6)(B)(vii) and Rule 14(c)(1) of the Local Rules.

So Ordered.

Steven Flanders, Secretary
of the Judicial Council

Dated: October 3, 1991
New York, New York

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 04-35 & 05-16

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: August 2, 2005)

Present: SCIRICA, Chief Judge.

These are complaints filed pursuant to 28 U.S.C. § 351 against a United States District Judge (Respondent). The complaints are a continuation of Complainant's efforts to have Respondent disqualified from hearing a now concluded civil action. The underlying civil action was removed to federal court from state court by the defendants and was assigned to Respondent's docket in 2002 when he became a federal judge.[1]

Complainant's principal allegation is that Respondent had been employed by a law firm that represented one of the defendants in the case. Respondent was employed by the

[1] The dismissal of Complainant's civil action was affirmed by the Court of Appeals. That dismissal was based, in part, on determinations that some of the claims presented were *res judicata* because they had been, or could have been, considered in earlier state court proceedings and because the statute of limitations had run on other claims.

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PORT Exhibit 1111 (d)

law firm for approximately six months in 1987.[2] Complainant also seeks to establish later post-employment ties between Respondent and the law firm, which Respondent has denied.[3]

Complainant also alleges that Respondent committed perjury during his Senate confirmation hearings, contending that a conspiracy has shielded discovery of these allegedly false statements. At least some of the allegations contained in the complaints were previously considered by the Court of Appeals, which declined to grant relief to Complainant.[4]

In the first complaint, the Complainant states:

> The following evidence is "clear and convincing" that [Respondent] did in fact, knowingly and willfully, provide false statements to the Senate of the United States in violation of U.S. Code, Chapter 18, Sec. 1001. Such conduct is without question prejudicial to the effective and expeditious administration of the courts. [Respondent] must be held accountable for his actions. Since October 12, 2002, [Respondent] has managed to avoid that accountability and has been aided and abetted by a cabal of individuals all of whom are in violation of the following appropriate sections of the U.S.

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[2] In two petitions for writs of mandamus, and in the direct appeal from the dismissal of the civil action, the Court of Appeals held that Respondent was not disqualified.

[3] In the second complaint, Complainant alleges, "It appears that [Respondent] was groomed to be [the law firm's] friend on the court and that his recusal on [law firm] cases was unacceptable." There is no factual basis for this claim.

[4] Complainant had also requested the prior Chief Judge to take action under Rule 19(A), Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability. The prior Chief Judge declined to take action under that provision of the rules. Complainant was advised through the clerk of court that he should file a formal complaint if he believed that Respondent had committed misconduct.

> Code [citing 18 U.S.C. § 1001, statements or entries generally; 18 U.S.C. § 4, misprision of felony; 18 U.S.C. § 1512, tampering with an informant; and, 18 U.S.C. § 371, conspiracy to commit offense].

The complaint concludes by stating:

> It is clear that [Respondent] cannot document his sworn statements to the Senate Judiciary Committee or he would have. The docket numbers and dates of [Respondent's] court appearances in the trials in state and federal courts where he appeared as lead counsel for [the firm] on behalf of [the asbestos manufacturer] simply do not exist. [Respondent's] conduct has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts.

Complainant alleges that although the resume Respondent sent to the Department of Justice as part of the nomination process did not reflect the circumstances of his employment with the law firm, this information was disclosed in Respondent's sworn

questionnaire submitted to the Senate's Committee on the Judiciary.[5] The crux of the complaint is that:

> [Respondent] swore he "...**represented the interests of [ ], a manufacturer of asbestos cloth in depositions and trials in state and federal courts**" during his employment with [the firm]. A red flag arose as to the credibility of these claims when [Respondent's] legal experience consisted of nine years of criminal law no known civil experience and he was suddenly trial counsel in a major class action asbestos litigation in state and federal courts.
>
> Exhaustive measures were taken to confirm [Respondent's] sworn statements concern his contact with [the firm]. A comprehensive search of the state and federal dockets did not reveal any entry of appearance by

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[5] The relevant portions of the questionnaire as identified and quoted by Complainant are:

> [Question] 18(b)(2) Describe your typical former clients, and mention the areas, if any in which you have specialized.
>
> [Answer] [ ], a manufacturer of asbestos blankets, was my sole client during my tenure at [the firm].
>
> [Question] 18(c)(1) Describe whether you appeared in court frequently, occasionally or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.
>
> [Answer] I occasionally appeared in court while employed at [the firm].
>
> [Question] 18(c)(4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel or associate counsel.
>
> [Answer] I served as lead counsel in all matters in which I appeared in court. I was counsel of record in several thousand bench trials and approximately seventy jury trials.

> [Respondent] in state of federal court on behalf of [the asbestos manufacturer.

Aside from searching the dockets of various courts for cases in which Respondent, "appeared as lead counsel on behalf of [the firm] on behalf of the [asbestos manufacturer]," Complainant avers that he contacted Respondent, the prior Chief Judge of the Court of Appeals, the chairperson of the law firm and a United States Senator to request assistance in finding these cases. He also avers that he filed a Freedom of Information Act request (for which Respondent declined to waive privacy restrictions) seeking this information. Additionally, Complainant filed a petition for a writ of mandamus in the Court of Appeals seeking to compel Respondent to provide him with the information. The Court of Appeals declined to issue a writ because the information requested was a matter of public record.

In the second complaint, Complainant elaborates on the details of his attempts to obtain information about Respondent's employment at the law firm from the Respondent and others. Complainant concludes that his failure to receive responses to his inquires demonstrates the existence of a conspiracy to thwart him from receiving the requested information.

Besides reiterating and elaborating on many of the same allegations made in the first complaint, Complainant in the second complaint alleges that Respondent has participated in two other cases in which he had conflicts of interest resulting from the judicial selection process that led to Respondent's nomination to the federal bench.

These two cases are cited as examples of the improper acts in furtherance of the alleged conspiracy. In these cases, there was an appearance by the law firm of the Chair of the judicial selection committee that made recommendations as to candidates for federal judgeships.[6] That committee, according to Complainant, rated Respondent as "recommended." No request for Respondent's disqualification was made by the parties in either of the two cases to which Complainant refers.

Both cases were pending at the time that Respondent joined the District Court. The first case was reassigned to Respondent shortly after he joined the Court. Six months later, an attorney from the selection committee chair's law firm entered an appearance in the case. After six days of trial, the case settled.

As to this case, Complainant alleges that Respondent, "participated in the orchestration of the assignment of a [ ] firm case for his adjudication." Complainant alleges that Respondent appointed the Chair's law firm to represent the pro se plaintiff in the case. But the record proves otherwise. The docket demonstrates that plaintiff was at all times represented by counsel. Nor is there any indication that the Chair's law firm was appointed or that Respondent was responsible for its involvement in the case.

[6] This "committee" is not official and is appointed by the two United States Senators.

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In the second case, the Chair had entered an appearance in the case four days before it was reassigned to Respondent. That case also settled. Complainant suggests that bribery may have occurred, but offers no factual basis for this allegation.

I

The judicial misconduct statute provides a remedy if a federal judicial officer, "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a).[7] A Chief Judge may dismiss a complaint brought under the statute if, after review, he finds that it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is legally frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i-iii).

Section 352(b)(1)(A)(ii) (formerly 28 U.S.C. § 372(c)(3)(A)(ii)), which provides for dismissal of complaints related to the merits of a decision or procedural ruling, reflects Congress' concern that a misconduct complaint not be used as vehicle by which disappointed litigants may challenge judicial action or inaction occurring in the course of litigation which is reviewable by appeal or mandamus. The Senate Report on 28 U.S.C. § 372(c) states, "It is important to point out what subsection (c) does not mean; it is not

[7] Effective November 2, 2002 the Judicial Improvements Act of 2002 replaced the former 28 U.S.C. § 372(c), which governed complaints of judicial misconduct or disability, with 28 U.S.C. § 351, *et seq*. Although certain additions and minor changes were made in regard to the complaint procedures, the substance of the former 28 U.S.C. § 372(c) remains intact.

designed to assist the disgruntled litigant who is unhappy with the result of a particular case." S. Rep. No. 362, 96th Cong., 2d Sess. 8 (1980), reprinted in 1980 U.S.C.C.A.N. 4315, 4322.

II

The complaints must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i)(ii) and (iii) as not being cognizable under the statute, being directly related to Respondent's judicial decisions and procedural rulings and as legally frivolous or lacking sufficient evidence to raise an inference of misconduct.

To the extent that Complainant contends that Respondent should have disqualified himself from his case because of his prior association with the law firm, this allegation must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) as being directly related to Respondent's judicial decisions and procedural rulings. Such case-related claims are not cognizable in a judicial misconduct proceeding. As noted, the Court of Appeals previously considered and rejected most of the same allegations presented in the complaints.

Insofar as Complainant alleges that Respondent in his confirmation process made statements which were, "knowingly and willfully, fabricated," about his legal career at the law firm, these allegations are subject to dismissal pursuant to 28 U.S.C. § 352(b)(1)(A)(i) as not being cognizable under the statute. Because this conduct occurred during a legislative proceeding before Respondent became a member of the federal

judiciary, the alleged discrepancies in the information provided to Congress are not subject to challenge in a judicial administrative disciplinary proceeding.

Even if the alleged inconsistencies in testimony and submissions to the Senate Judiciary Committee were a proper subject for a complaint filed pursuant to 28 U.S.C. § 351, dismissal of these complaints pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) would be required. Complainant asserts that Respondent's answer to question 18(c)(4) misstated or overstated his role in regard to his representation of the asbestos manufacturer and may not have been consistent with answers given to other questions. But there is no evidence that Respondent intentionally misled or knowingly made materially false statements to the Senate. Complainant's allegations of criminal conduct by Respondent are conclusory and not supported by the evidence.

Complainant's allegations that Respondent (and others) have improperly failed to assist him in locating the docket numbers and dates are frivolous. Neither Respondent, nor others, were obligated to assist Complainant in researching matters of public record in various state and federal courts. There is no evidence presented in the complaint to even suggest the existence of a conspiracy.

Finally, Complainant's assertions concerning the alleged conflicts of interest are without merit and must also be dismissed as legally frivolous pursuant to 28 U.S.C. §

352(b)(1)(A)(iii).[8] The claims alleging either an actual impropriety or an appearance of impropriety do not rise to the level of judicial misconduct.

Complainant's allegations involving a conflict of interest in his case because of Respondent's former association with the law firm, have been considered and rejected by

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[8] As noted, in regard to Complainant's case the Court of Appeals rejected many of Complainant's arguments in three different appellate proceedings. In one of those decisions, the Court noted that Respondent stated that he had no continuing relationship with the firm after leaving in 1987, after six months of employment.

The Judicial Conference's Committee on Codes of Conduct has suggested that a disqualification of at least two years from hearing cases involving a judge's former law firm is adequate and appropriate unless some type of extenuating circumstances are present:

> Apart from recusal during the period when the judge is receiving payments from a former law firm, there is a broader question of the appearance of impropriety in the judge's hearing cases involving that firm. Many judges have an automatic rule of disqualification for a specified number of years after leaving the law firm. How long a judge should continue to recuse depends upon various circumstances, such as the relationship the judge had at the law firm with the lawyer appearing before the judge, the length of time since the judge left the law firm, and the relationship between the judge and the particular client and the importance of that client to the firm's practice. The Committee recommends that judges consider a recusal period of at least two years, recognizing that there will be circumstances where a longer period may be more appropriate. In all cases in which the judge's former law firm appears before the judge, the judge should carefully analyze the situation to determine whether his or her participation would create any appearance of impropriety.

Advisory Opinion No. 24 (September 1, 1972 as revised July 10, 1998). Here, Respondent severed his ties with the firm fifteen years ago. There are no circumstances that would create an appearance of impropriety, or an actual impropriety as to Complainant's case.

the Court of Appeals. To the extent that Complainant seeks to embellish these claims with allegations of perjury and conspiracy, his allegations are conclusory, speculative and not supported by the evidence.

Nor do Complainant's allegations involving the selection committee chair's law firm rise to the level of judicial misconduct. The allegations are too remote and attenuated to create an appearance of impropriety in regard to either his, or his firm's, appearance in cases before Respondent. Furthermore, Complainant has provided no factual basis for his bare allegations.

Accordingly the complaints are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i)(ii) and (iii).

/s/ Anthony J. Scirica
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 04-35 & 05-16

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

ORDER

(Filed: August 2, 2005)

Present: SCIRICA, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are hereby dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i)(ii) and (iii).

This order constitutes a final order under Rule 4(B), Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability.

The Complainant is notified in accordance with Rule 5, Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability, of his right to appeal this decision by the following procedure:

> (A) Petition. [A] petition for review may be addressed to the Judicial Council of the Third Circuit.
>
> (B) Time. A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter transmitting the chief judge's order.

(C) Form. A petition should be in the form of a letter addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order...." There is no need to enclose a copy of the original complaint.

The full text of Rule 5 is available from the Clerk's Office of the Court of Appeals of the Third Circuit.

/s/ Anthony J. Scirica
Chief Judge

Dated: August 2, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 04-3289

United States
v.
Jaimes-Lopez

(E.D. Pa. No. 04-cr-00164)

ORDER

The following order is issued in accordance with procedures established by the court for cases raising issues based on United States v. Booker, 125 S. Ct. 738 (2005). If appellant wishes to raise an issue based on United States v. Booker, appellant must do so by filing within 14 days of the date of this order a letter that succinctly states the factual and legal basis of the challenge. The letter must not exceed 750 words. Cf. Fed. R. App. P. 28(j). If appellant wishes to challenge only the sentence, the letter must state that only the sentence, and not the conviction, is being challenged. This statement will be construed as waiving any issues related to the conviction. Appellant must file with the clerk an original and three copies of the letter, with certificate of service.

Any response by the government must be made within 14 days of service and must be similarly limited. An original and three copies, with certificate of service, of the response must be filed. Further briefing on the Booker issue will be permitted only at the court's direction.

For the Court,

/s/ Marcia M. Waldron
Clerk

Date: March 1, 2005
DMM/cc: Stephen J. Britt, Esq.
Richard J. Zack, Esq.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 06-24

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

AMENDED MEMORANDUM OPINION

(Filed: July 5, 2006 and Amended August 17, 2006)*

Present: SCIRICA, Chief Judge.

This is a complaint filed pursuant to 28 U.S.C. § 351 against a United States District Judge (Respondent). Complainant was convicted of drug trafficking and a related firearms offense in a trial before another District Judge and received a lengthy prison sentence. After that Judge retired, a pending 28 U.S.C. § 2255 motion was re-assigned to Respondent for decision. This complaint, alleging bias, conflict of interest and undue delay, was filed after the § 2255 motion was dismissed.

Complainant claims that Respondent has demonstrated:

> "a personal bias or prejudice towards movant or favoritism towards the prosecution due to his duties in his former capacity as an assistant united states attorney, in which he worked hand-in-hand In criminal investigations/prosecutions with AUSA [the prosecuting attorney in his case] in the 1980's and 90's.

* The August 17, 2006 amendment corrected typographic errors in the Memorandum Opinion as it was originally issued.

He also claims that Respondent has a close personal friendship with Complainant's trial counsel, developed when they worked together in a law firm, which precluded Respondent from fairly considering the claims of ineffective assistance of counsel presented in the § 2255 motion.[1]

It is also alleged that there was inappropriate delay in deciding the § 2255 motion.[2] That motion was assigned to Respondent in April, 2003 and decided in March, 2006. During that time a great deal of litigation occurred. An amended brief was filed by Complainant as well as motions by the government for leave to file an amended answer and to expand the record. The government's motions were contested by Complainant. In the Memorandum Opinion dismissing the § 2255 motion, not only were at least ten substantive issues raised by Complainant in his § 2255 motion addressed, but also motions for reconsideration of the decisions granting the government's motions were considered. In addition, a motion for enlargement on bail filed by Complainant was decided during the time that the § 2255 motion was pending before Respondent.

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[1] Respondent was an associate in the law firm from 1985 until 1987. From 1987 until 1992 he was an Assistant United States Attorney. He has been a federal judge since 2002.

[2] Complainant also appears to suggest that there has been undue delay in deciding a post-decision motion challenging the dismissal of the § 2255 motion. That post-decision motion has been pending approximately two months, having been filed in April, 2006.

I

The judicial misconduct statute provides a remedy if a federal judicial officer, "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a). A Chief Judge may dismiss a complaint brought under the statute if, after review, he finds that it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is legally frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i-iii).

Section 352(b)(1)(A)(ii) (formerly 28 U.S.C. § 372(c)(3)(A)(ii)), which provides for dismissal of complaints related to the merits of a decision or procedural ruling, reflects Congress' concern that a misconduct complaint not be used as vehicle by which disappointed litigants may challenge judicial action or inaction occurring in the course of litigation which is reviewable by appeal or mandamus.[3] The Senate Report on 28 U.S.C. § 372(c) states, "It is important to point out what subsection (c) does not mean; it is not designed to assist the disgruntled litigant who is unhappy with the result of a particular case." S. Rep. No. 362, 96th Cong., 2d Sess. 8 (1980), reprinted in 1980 U.S.C.C.A.N. 4315, 4322.

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[3] Effective November 2, 2002 the Judicial Improvements Act of 2002 replaced the former 28 U.S.C. § 372(c), which governed complaints of judicial misconduct or disability, with 28 U.S.C. § 351, *et seq*. Although certain additions and minor changes were made in regard to the complaint procedures, the substance of the former 28 U.S.C. § 372(c) remains intact.

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II

The complaint must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) since determination of all the claims presented would ultimately require consideration of the merits of judicial decisions and procedural rulings. Referring to 28 U.S.C. § 372(c)(3)(A)(ii) (now 28 U.S.C. § 352(b)(1)(A)(ii)), the Judicial Council of the Ninth Circuit has stated:

> There is...a statutory directive for dismissal of complaints of judicial misconduct which in substance are simply objections to substantive or procedural error. This principle is supported by compelling policy. To determine whether a judge's rulings were so legally indefensible as to mandate intervention would require the same type of legal analysis as is afforded on appeal.

In re: Complaint of Judicial Misconduct, 685 F.2d 1226, 1227 (Ninth Circuit Judicial Council 1982). Since resolution of the claims presented in the complaint would require exactly the same type of legal analysis necessary to determine an appeal concerning those allegations, the claims cannot be considered in a judicial misconduct proceeding.

It is well established that absent extraordinary circumstances claims of bias or conflict of interest in regard to an individual case or litigant are not cognizable in a judicial misconduct proceeding since they may be reviewed through the normal case related processes. In re: Latimer, 955 F.2d 1036 (Fifth Cir. Judicial Council, 1992); In re: Charge of Judicial Misconduct, 595 F.2d 517 (Ninth Circuit Judicial Council, 1979). No extraordinary circumstances are presented in this complaint.

As to the propriety of Respondent's hearing cases prosecuted by the United States Attorney's Office in light of his prior employment by that office, guidance is provided by Canon 3(C)(1)(e) of the Code of Conduct for United States Judges which requires disqualification when:

> [T]he judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.[4]

This is amplified by §3.3.3(b) of the Compendium of Selected Opinions of the Committee of Codes of Conduct.[5] That section states:

> A judge who formerly served as Assistant or Deputy United States Attorney should recuse from all cases involving matters with which the judge came in contact during the judge's tenure, or for which the judge bore some responsibility, but need not recuse from cases in which the judge did not participate. Similarly, a judge who participated in investigation of a defense contractor need not recuse from unrelated cases involving the contractor, where the subject and issues are completely unrelated.

Accordingly, there is no blanket prohibition which would require Respondent to disqualify himself from all cases in which the United States Attorney's Office is involved. Instead, he must make a determination concerning recusal in each individual case in

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[4] The language of this Canon mirrors that of 28 U.S.C. § 455(b)(3) which requires automatic disqualification if any of the listed situations exist.

[5] The Compendium is a summary of selected published and unpublished advisory opinions issued by the Committee on Codes of Conduct.

which the United States Attorney's Office appears.[6] Since this determination must be made on a case by case basis, it is a merits-related decision which is not cognizable in a misconduct proceeding.

Likewise, the allegations that Respondent knows and has personal relationships with both counsel in Complainant's case must be dismissed not only as being related to the merits of the Respondent's decisions or procedural rulings but also as legally frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).[7]

A judge is permitted to have friends and participate in society, even when that means coming into contact with attorneys or others who might appear before him or her on the bench. See e.g. Judicial Conference Committee on Codes of Conduct Advisory Opinion 11 (January 21, 1970, as revised January 16, 1998)(disqualification by judge not required when one of the attorneys appearing before him was the godfather of the judge's

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[6] Given the length of time which has passed since Respondent left that office, it would appear that disqualification would seldom, if ever, be required because of a conflict resulting from his prior employment with that office.

[7] Complainant also avers that Respondent has a personal bias or prejudice against him. Other than this conclusory allegation, there is no basis for this claim as presented in the complaint.

All of Complainant's allegations that the Respondent acted with some inappropriate animus are speculative and conclusory in nature and not supported by any factual allegations in the record, but rather, appear to be based solely on Complainant's opinion as to what the outcome of the decision on his § 2255 motion should have been. These allegations, therefore, are not only subject to dismissal as being merits-related but also as legally frivolous.

child; absent special circumstances a friendly relationship does not require automatic disqualification).

In a misconduct case alleging that a judge was improperly influenced because of the judge's friendship with a United States Senator, it was aptly stated about the judge's personal relationships with the Senator and within the community at large:

> By itself, the judge's friendship with the Senator poses an insufficient incentive for wrongdoing to lead a reasonable observer to doubt the judge's impartiality. Reasonable observers understand that federal judges may in the course of their lives have established friendships with those serving in other branches of government; reasonable observers also presume that federal judges, like the vast majority of unelected public officials, are able to disregard the political views of their friends and carry out their responsibilities in a fair and impartial manner. See United States v. Jordan, 49 F.3d 152, 157-59 & n.6 (5th Cir. 1995)(friendship between a judge and a person with an interest in the case does not necessarily result in an appearance of impropriety); United States v. Murphy, 768 F.2d 1518, 1537-38 (7th Cir. 1985)(an ordinary friendship between judge and lawyer appearing in case does not create an appearance of impropriety).

In the Matter of a Charge of Judicial Misconduct or Disability, 85 F.3d 701, 707 (Judicial Council of the District of Columbia Circuit, 1996)(Tatel, J., concurring).

Allegations of delay in an individual case are also not cognizable in judicial misconduct proceedings, absent truly extraordinary circumstances, because remedies exist using the normal judicial processes. In re: Charge of Judicial Misconduct, 593 F.2d 879 (9th Cir. Judicial Council 1979). The type of circumstances in which delay in a single case might be considered in a misconduct proceeding are discussed in the Commentary to Rule 1, Rules of the Judicial Council of the Third Circuit Governing Complaints of

Judicial Misconduct and Disability. Nothing has been demonstrated in this complaint which approaches those types of circumstances. Therefore, consideration of Complainant's allegations of delay is not appropriate in a judicial misconduct proceeding.

Accordingly the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

/s/ Anthony J. Scirica
Chief Judge

DEF02351

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 06-24

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

ORDER

(Filed: July 5, 2006)

Present: SCIRICA, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

This order constitutes a final order under Rule 4(B), Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability.

The Complainant is notified in accordance with Rule 5, Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability, of his right to appeal this decision by the following procedure:

> (A) Petition. [A] petition for review may be addressed to the Judicial Council of the Third Circuit.
>
> (B) Time. A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter transmitting the chief judge's order.

(C) Form. A petition should be in the form of a letter addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order...." There is no need to enclose a copy of the original complaint.

The full text of Rule 5 is available from the Clerk's Office of the Court of Appeals of the Third Circuit.

/s/ Anthony J. Scirica
Chief Judge

Dated: July 5, 2006

U. S. COURT OF APPEALS
FILED
MAY 17 2001
CHARLES R. FULBRUGE III
CLERK

BEFORE THE JUDICIAL COUNCIL OF THE
FIFTH CIRCUIT

IN RE: NO. 01-05-372-0034

PETITION FOR REVIEW BY [redacted] OF THE FINAL ORDER FILED FEBRUARY 26, 2001, DISMISSING JUDICIAL MISCONDUCT COMPLAINT AGAINST [redacted], UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT OF 1980.

ORDER

An Appellate Review Panel of the Judicial Council of the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the Order of Chief Judge King, dated February 26, 2001, dismissing the Complaint of [redacted] against [redacted] under the Judicial Conduct and Disability Act of 1980. The Order is therefore

AFFIRMED.

15 MAY '01
Date

E. Grady Jolly
United States Circuit Judge,
For the Judicial Council of
The Fifth Circuit

DEF02354
PORT Exhibit 1111 (f)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
FEB 26 2001
CHARLES R. FULBRUGE III
CLERK

Docket Number: 01-05-372-0034

MEMORANDUM

Complainant complains of actions taken by the subject United States District Judge while he served on the state court bench, before his appointment to the federal judiciary. She states that the judge should not have dismissed her two pro se civil suits, should not have permitted an amendment to the pleadings in one suit, and should not have granted a continuance in the other. She urges that the judge's acts were "prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 372(c)(1).

Even if a judge's pre-appointment conduct could be said to meet this statutory standard so that it might be subject to review under § 372(c), this complaint would be subject to dismissal under § 372(c)(3)(A)(ii) because it relates directly to the merits of the judge's rulings.

Judicial misconduct proceedings under 28 U.S.C. § 372(c) are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

An order dismissing the complaint is entered simultaneously herewith.

Carolyn Dineen King
Chief Judge

February 19, 2001

U. S. COURT OF APPEALS
FILED
JUN 2 9 2004
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Docket Number: 04-05-372-0069

MEMORANDUM

Complainant complains of actions taken by the subject United States District Judge while he served on the state court bench, before his appointment to the federal judiciary. She submits that the judge should have recused himself because his wife is distantly related to one of the defendants.

Even if a judge's pre-appointment conduct could be said to be subject to review under 28 U.S.C. §§ 351-364 et. seq., the complaint would be subject to dismissal under 28 U.S.C. § 352 (b)(1)(A)(ii) and (b)(1)(B).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

This is complainant's second merits-related misconduct complaint relating to proceedings that took place sixteen years ago in a state court. She is WARNED that should she again try to use the complaint process to attack the merits of a judicial ruling, she may be required to show cause why she should not be barred from filing

DEF02356
PORT Exhibit 1111 (a)

future complaints. See Rule 19(c), Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability.

An order dismissing the complaint is entered simultaneously herewith.

Carolyn Dineen King
Chief Judge

June 25, 2004

DEF02357

U. S. COURT OF APPEALS
FILED
AUG 1 2 2004
CHARLES R. FULBRUGE III
CLERK

BEFORE THE JUDICIAL COUNCIL OF THE
FIFTH CIRCUIT

IN RE: NO. 04-05-372-0069
PETITION FOR REVIEW BY [redacted]
THE FINAL ORDER FILED JUNE 29, 2004, DISMISSING
JUDICIAL MISCONDUCT COMPLAINT AGAINST [redacted]
[redacted] UNDER THE
JUDICIAL CONDUCT AND DISABILITY ACT OF 1980.

O R D E R

An Appellate Review Panel of the Judicial Council of the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the Order of Chief Judge King, dated June 29, 2004, dismissing the Complaint of [redacted] against [redacted], under the Judicial Conduct and Disability Act of 1980. The Order is therefore

A F F I R M E D.

9 AUG '04
Date

E. Grady Jolly
United States Circuit Judge,
For the Judicial Council of
the Fifth Circuit

U. S. COURT OF APPEALS
FILED
MAR 30 2007
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Docket Number: 06-05-351-0027

MEMORANDUM

The complainant attorney has submitted a misconduct complaint against the subject District Judge based on the judge's actions in three environmental mass tort lawsuits. The first of these suits was filed in state court, removed to the subject judge's court, and assigned to the subject judge. The second was also filed in state court in 1996, removed to another district, and eventually transferred and consolidated with the first. Complainant served as class counsel in these two cases. The third case was filed in the subject judge's court as a diversity class action to implement a settlement agreement reached in the first two cases.

Complainant was allowed to intervene in the class action to seek fees and costs arising from his work in the earlier litigation, but the Plaintiffs Steering Committee (PSC) filed a motion to disqualify (and preclude any award of fees to) him. His motion to recuse the subject judge from handling the disqualification and fees matters was referred to another district judge for consideration and denied. His petition for writ of mandamus seeking a finding that the transfer of the motion to recuse was improper and also seeking a reversal of the order denying the motion to recuse has been denied by the Fifth Circuit. Complainant's mandamus petition makes clear that he waited to file a motion to recuse until after efforts to resolve the matter of attorneys fees between him

DEF02359
PORT Exhibit 1111 (h)

and his former co-counsel were unsuccessful. His for fees and the PSC's motion for disqualification remain pending.

Complainant states that the subject judge made a diligent effort to settle the case and that he has "no problem" with the judge's mediation efforts. "My disagreement with [the judge] began" later on during settlement negotiations.

Complainant alleges that because the subject judge's son worked for one of the plaintiff firms appearing in his court, he should have recused himself. The judge's son worked as a law student intern at the offices of both plaintiff and defense counsel, and complainant does not allege that he worked on any matter related to the litigation pending before his father. Nothing complainant alleges demonstrates that the judge was required to recuse himself. This aspect of the complaint is subject to dismissal pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also alleges that one of the judge's law clerks worked for counsel representing the plaintiffs in the first of the listed cases at the same time that she was also clerking for him. The clerk did associate herself with one of the plaintiffs' lawyers after her clerkship with the subject judge ended, appeared in the second case when it was filed in 1999, and was appointed to the PSC in 2001. Complainant cites the clerk's *curriculum vitae* as showing that her federal clerkships lasted from 1997 to 1999. However, the dates given on the resume are incorrect, as court records reflect that she clerked in another federal court from 1995-96 and then for the subject judge from 1996-97. The first of the underlying cases in the litigation complained about was not removed to the subject judge's court until November 1999. The clerk's future employer was also plaintiff's counsel in another case pending before the subject judge, which was substantially resolved by his order approving a settlement in June 1997. Nothing in the

DEF02360

record ties her to plaintiffs' counsel while this earlier case was pending before the subject judge. Other than his bald assertion, complainant has provided no information that the judge was aware of her working on any private matter or case outside of his docket while in his employ, or had any information about her future employment plans. This aspect of the complaint is subject to dismissal pursuant to 28 U.S.C. § 352(b)(1)(A) (iii).

Complainant also complains that the clerk was named liaison counsel for the PSC so as to exert influence over the subject judge. Nothing in the record indicates that she was appointed liaison counsel. He states that the judge "ordered" that the parties could present *ex parte* comments to him concerning settlement which facilitated improper *ex parte* communications. Such an order is not apparent from a review of the docket sheet, which does reflect separate settlement discussions with defendants. Nevertheless, *ex parte* communications in connection with settlement efforts are standard procedure for mediators. Canon 3A(4) of the Code of Conduct provides that a judge may, with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

In the context of the PSC's motion to disqualify him, complainant issued a subpoena for various documents, including those concerning *ex parte* communications with the judge and the employment of his son.[1] The PSC moved to quash, and the subject judge referred the motion to another district judge. Complainant filed a petition for writ of mandamus asking this court to vacate the referral order. In its order denying the petition, our court wrote that it found no merit in complainant's accusations.

[1] Complainant states in the complaint that his attorney submitted discovery requests, which were referred to another district judge, in anticipation of filing a motion to recuse against the subject judge.

Furthermore, the fact that an attorney may have clerked for a judge does not compel the conclusion that the attorney will then be in a position to exert undue influence over the judge. In fact, another of the subject judge's former law clerks was also involved in the on the defense side. This aspect of the complaint is subject to dismissal pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

Complainant also claims that the judge was informed that a class representative was an employee or spouse of an employee of one of the plaintiff firms, and that a class representative's spouse had received a car from one of the plaintiff attorneys, but did not take any action. Complainant appears to suggest that these allegations were raised by counsel for objectors in the context of their opposition to the settlement agreement, but later states that they "agreed to drop the allegations against class counsel". In essence, this aspect of the complaint is related to the merits of the judge's decision not to investigate the allegations and is subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant claims that the subject judge should not have presided over the class action fairness hearing because he could not be neutral about a settlement he helped create. There is no doubt that the judge was substantially involved in the settlement process. In discussing the Code of Conduct for United States Judges and Federal Rules of Civil Procedure Rule 16, the Committee on Codes of Conduct has stated that neither the Canons nor Rule 16 *require* a judge who engaged in settlement discussions to recuse from presiding over subsequent proceedings in the case. Advisory Opinion No. 95, "Judges Acting in a Settlement Capacity". Instead, the question of recusal should be decided on a case-by-case basis. *Id.* The objectors' motion to recuse the judge from presiding over the fairness hearing on this ground was denied by him and later withdrawn after certain protections for individuals seeking additional relief in state court

were put in place.[2] No appeal was taken. This contention is therefore merits-related and subject to dismissal pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant asserts that the subject judge should have recused himself because of close personal ties to counsel. For example, the judge attended the out-of-state wedding of one of plaintiffs' counsel (at the judge's own expense) and complainant alleges that he also attended "at least one" college football game as a guest of counsel. Canon 5 of the Code of Conduct for United States Judges provides that judges may engage in social and recreational activities if such activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's duties. The Commentary to Canon 5 states that a judge should not become isolated from the society in which the judge lives. Nothing in the complaint leads to the conclusion that the judge's ability to carry out his judicial responsibilities with integrity, impartiality and competence was impaired. Moreover, a complaint of judicial misconduct is not to be used as a substitute for the normal appellate process. This aspect of the complaint is subject to dismissal pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

Complainant states that the subject judge became overly invested in promoting settlement. For example, he complains that after the first case had been pending before the judge for three years and nine months, the judge called one of the firms representing the plaintiffs to alert them to the fact that counsel representing a recently-added defendant was retained to represent the Judge's wife in a suit involving an automobile accident, and that as a result of the phone call the new defendant was dismissed from the suit. Complainant's description of the situation implies that the judge was trying to

[2] Though complainant was not counsel of record for the objectors, he did provide them with affidavits in support of their motion to recuse, and he did represent individuals who had opted out of the settlement in order to preserve their rights to pursue further relief in state court.

avoid an unnecessary disqualification after the judge and the parties had invested much time and effort in the case.

Whether the dismissal was provoked by the judge's telephone call or by other independent reasons is beyond the scope of my investigation. However, Canon 3D of the Code of Conduct for United States Judges provides that (with exceptions not pertinent to this inquiry) when a judge might be disqualified in a proceeding because "the judge's impartiality might reasonably be questioned", the judge may participate in the proceeding if all parties and lawyers, after notice, agree to waive the disqualification. It is apparent from the Canon that the alleged situation is one that can be cured, and the judge chose to cure it by requesting dismissal of the party. This aspect of the complaint is subject to dismissal pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) as it is, in effect, a complaint challenging the merits of the judge's action in this respect.

Complainant also alleges that in his zeal to promote a compromise, the subject judge imposed settlement terms on the parties and refused to consider motions to remand filed by defendants uncomfortable with his settlement strategy. If the judge applied undue pressure on the defendants to settle the case, one would expect them to complain, but there is no record of their having done so. Arguably, while settlement discussions appeared to be productive, the more efficient course was first to see if they would be successful and not divert the focus of court and counsel. Regardless, any complaint addressing the judge's actions while assisting the parties to negotiate a settlement or relating to his management of the case are merits-related and subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(ii).

I have conducted a limited inquiry pursuant to 28 U.S.C. § 352. Certain aspects of this complaint should be dismissed as either merits-related or lacking sufficient

evidence to raise an inference that misconduct has occurred. Pursuant to 28 U.S.C. § 352(b)(2), a complaint may also be concluded after appropriate remedial action has been taken. The issues raised in this complaint have been addressed with the subject judge. I am assured that these concerns have been appropriately noted and that due care will be given in future judicial proceedings to avoid situations that could be misinterpreted in ways that might have the effect of undermining the public's confidence in the judicial process.

An order dismissing and concluding the complaint is entered simultaneously herewith.

Edith H. Jones

Edith H. Jones
Chief Judge

March 27, 2007

DEF02365

85-9-372-10

CHAMBERS OF
WALTER J. CUMMINGS
CHIEF JUDGE
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

FOR MAY 7TH RELEASE TO THE MEDIA

May 7, 1985

Honorable Charles B. McCormick
United States Bankruptcy Court
Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604

Dear Judge McCormick:

As I advised you by letter on May 1, the Judicial Council of the Seventh Federal Circuit has completed an investigation of a written misconduct complaint under 28 U.S.C. § 372(c)(1) concerning your conduct of the Wisconsin Steel Company Chapter 11 reorganization proceedings in which International Harvester Co. filed a claim of $146,627,830 against the bankrupt estate. Subsequently, debtor Wisconsin Steel Company filed a counterclaim against Harvester alleging fraud in Harvester's sale of Wisconsin Steel to Envirodyne Industries, Inc. These proceedings are numbered 80 B 03766 through 80 B 03773 and Adversary No. 81 A 0442, and still pend in the United States District Court for the Northern District of Illinois in Chicago.

On March 29 of this year, I advised you that in the investigation of the complaint, the following documents were reviewed: correspondence from District Judge John Grady concerning this matter; the transcript of the January 22, 1985, proceedings before you; the transcript of proceedings later that day before Judge Grady; Harvester's motion to disqualify you and for other relief filed on that same date; your January 29, 1985, reply to that motion; Judge Grady's order and memorandum opinion of March 6, 1985, disqualifying you from further participation in the Wisconsin Steel Company case, ordering its reassignment to another bankruptcy judge, and ordering you and Wisconsin Steel's counsel to list other orders similar to those you issued on November 18, 1982, and January 7, 1985, and involved in the complaint.

On March 27, 1985, you advised the district court that your December 3, 1981, order in the Wisconsin Steel Company case might have been issued under similar circumstances to the November 18, 1982, and January 7, 1985, orders. At the same time, Wisconsin Steel's counsel advised Judge Grady that your December 3, 1981, order requiring parties other than

PORT Exhibit 1111 (i)

International Harvester to produce certain documents for Wisconsin Steel's inspection, and your March 15, 1982, order denying the Chicago, West Pullman & Southern Railroad Co.'s application for payment of $75,180 demurrage charges by Wisconsin Steel were prepared by Wisconsin Steel's counsel pursuant to your request through your law clerk. Your letter to me of April 11, 1985, confirmed that you entered the four orders after directing your law clerk to obtain drafts from Wisconsin Steel's counsel which you released as your own. The January 7, 1985, ruling was denominated an "Opinion and Order" and consisted of 11 pages and contained numerous citations. The November 18, 1982, decision was labelled "Order" and was of the same length and also studded with citations. The December 3, 1981, "Order" was only four pages but referred to numerous federal opinions. Finally, the March 15, 1982, "Order" was five pages and again referred to prior federal cases and one from Colorado. At least colloquially all of them might well be denominated opinions and represent considerable scholarship.

The record reveals that in the above four instances, you did not reveal to any counsel other than Wisconsin Steel's how you planned to decide the matters covered by those orders, and that through your law clerk you directed Wisconsin Steel's counsel to prepare the drafts which you eventually released without change under your name. Your letter of April 11 indicates that you have no recollection of other ex parte communications with counsel for a litigant requesting its counsel directly, or through your law clerk upon your direction, to prepare orders in cases being litigated before you without notifying opposing counsel in advance of your decisions and requests.

By resolution of the Judicial Conference of the United States, the Code of Conduct for United States judges is applicable to bankruptcy judges and United States magistrates as well as to the other federal judges. Canon 1 requires a judge to "uphold the integrity and independence of the judiciary" and Canon 2 requires a judge to "avoid impropriety and the appearance of impropriety in all his activities." Particularly applicable to the facts brought to the attention of the Judicial Council of the Seventh Federal Circuit with respect to yourself, Canon 3A(4) provides:

> A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives

notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

The four instances brought to our attention in which you directed your law clerk to have Wisconsin Steel's counsel prepare proposed orders in its favor and which you subsequently released without change and without prior notice to Harvester's counsel clearly violate all three of the above Canons. These violations would not have come to light except that counsel for Harvester discovered that your order of January 7, 1985, had been received by counsel for Wisconsin Steel a day before its receipt by counsel for Harvester. This prompted the law firm representing Harvester to conduct an investigation which disclosed that your November 18, 1982, and January 7, 1985, orders had been prepared by counsel for Wisconsin Steel on paper bearing their watermark and their type face.

If you had announced your rulings in advance to both concerned parties and then in the presence of both had directed counsel for one of them to prepare orders carrying out your rulings, there would have been no violation of the Canons. Because no secrecy is involved, it is also blameless for a judge to ask counsel for both sides to prepare and serve on the other side proposed findings of fact and conclusions of law and orders. The judge can then select the version, altered or unaltered, which he prefers. However, counsel for Harvester and others were never told how you would rule with respect to Wisconsin Steel's motion to dismiss Harvester's counterclaim, Wisconsin Steel's motion for discovery of documents in Harvester's possession that were allegedly protected by the attorney-client privilege, Wisconsin Steel's motion to compel parties other than Harvester to produce documents, and Chicago, West Pullman & Southern Railroad Co.'s application for Wisconsin Steel's payment of demurrage charges. The misconduct lay in your ex parte having your law clerk request counsel for Wisconsin Steel to prepare those four orders and then releasing them as your own. All four orders were in Wisconsin Steel's favor and counsel for Harvester never had a chance to object to them in advance. In fact, there could have been no plausible ethical objection to the procedure used as to the four orders except for the foregoing mailing incident revealing dramatically the covert unethical practices employed. It is no defense that you retained one of the draft orders four to six months before entering it on January 7, 1985, without change.

The knowledge that a judge will rule in a particular way is invaluable information to the lawyer and the client, particularly when the other lawyers and their clients do not share in that information.

In the course of the January 22 transcript, when this practice surfaced, you defended your action by stating that you frequently ask lawyers to submit proposed orders. On the other hand, your letter of April 11 reveals only four such ex parte instances. That feature is of course the vice involved. While you stated in the same transcript that you do not have time to sit down and draft orders and therefore you have lawyers submit proposed orders, your April 11 letter does not admit to any other instances where this was done ex parte. You also stated in the January 22 transcript that you do not regard as improper the procedure you employed, adding that you "think it's a procedure that's followed from time to time not only in this court but probably in most every other court." Your April 11 letter to me does not reveal any other instances except these four, and you add therein that you have "no knowledge of whether any of my fellow judges engage in that practice." I do not agree with you that your secret procedure in these four instances has been followed by other members of your court or by other judges. No such instance has ever been brought to our attention, and all of us were shocked when we learned of your practice in at least these four instances.

The misconduct here is especially disquieting since counsel for Wisconsin Steel was successful in all four uncovered instances. It is understood that the Executive Committee of the United States District Court for the Northern District of Illinois is looking into that firm's unfortunate behavior in these four instances.

As you know, there has been considerable publicity about your conduct in this bankruptcy proceeding, thus persuading the Judicial Council of this Circuit that a written public censure is essential in addition to the oral reprimand that I have meted out this day. These sanctions are warranted under 28 U.S.C. § 372(c)(6).

As you admitted in your April 11 letter to me, you now realize that your conduct in this case has "given rise to the appearance of unprofessional conduct." In the future, in accordance with the Canons of Judicial Ethics, you must of course eschew any incidents which would ever again give rise to the "appearance of impropriety."

Very truly yours,

Walter J. Cummings

Walter J. Cummings,
Chief Judge of the
Seventh Circuit

May 7, 1985

Honorable Walter J. Cummings
Chief Judge of the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Dear Judge Cummings:

I hereby resign as Chief Judge of the Bankruptcy Court in the Northern District of Illinois but am retaining my position on that Court.

Sincerely,

Charles B. McCormick
United States Bankruptcy
Judge

FILED
SEP 11 2000
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

In re Charge of	No.00-80018
	No.00-80045
Judicial Misconduct	ORDER AND MEMORANDUM

Before: HUG, Chief Judge, SCHROEDER, NELSON, TASHIMA and SILVERMAN, Circuit Judges, HOGAN, EZRA and SINGLETON, Chief District Judges, and KEEP, District Judge.

On February 3, 2000, a complaint of judicial misconduct was identified by the chief judge against District Judge Alan A. McDonald. On April 4, 2000, a separate complaint against Judge McDonald was received and filed. The complaints were consolidated on April 26, 2000. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. § 372(c).

Pursuant to 28 U.S.C. § 372(c)(4)(A) and Rule 4(e), the chief judge appointed a special committee to investigate press reports (and the subsequent complaint) alleging that the judge wrote and passed notes that made disparaging comments about people in his courtroom. This matter comes before the Council upon the filing of the special committee's report.

DEF02371
PORT Exhibit 1111 (j)

After due consideration of the special committee's report, the Council adopts the findings and recommendations of the committee and attaches as a part of this order that report. For the reasons stated by the committee, the Council reprimands Judge McDonald for his conduct, having concluded that such conduct is prejudicial to the effective administration of the business of the courts.

This order shall be made public. 28 U.S.C. § 372(c)(6)(B)(vi); Misconduct Rules 14(f)(1) and 17(d).*

Dated this eleventh day of September, 2000.

JUDICIAL COUNCIL OF THE NINTH CIRCUIT

Proctor Hug, Jr., Chief Judge

Mary M. Scroeder, Circuit Judge

Thomas G. Nelson, Circuit Judge

A. Wallace Tashima, Circuit Judge

Barry G. Silverman, Circuit Judge

Michael R. Hogan, Chief District Judge

David A. Ezra, Chief District Judge

James K. Singleton, Chief District Judge

Judith Keep, District Judge

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* Judge McDonald has waived his right to petition for review by the Judicial Conference of the United States and therefore the Judicial Council is releasing this Order immediately.

DEF02372

JUDICIAL COUNCIL FOR THE NINTH CIRCUIT
In Complaints of Judicial Misconduct
No. 00-80018
No. 00-80045

FILED
SEP 11 2000
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Report and Recommendation of the Special Committee

This Report is submitted to the Judicial Council of the Ninth Judicial Circuit by the Special Committee appointed by the Chief Judge to investigate the claims of judicial misconduct filed against Senior District Judge Alan A. McDonald of the Eastern District of Washington. The Report is made pursuant to the authority of 28 U.S.C. § 372(c) and the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability ("Misconduct Rules"). The procedural history of these complaints and the events surrounding them are set forth in Part I, below; the findings of this Committee are set forth in Part II; and the reasons for the Committee's recommendation are set forth in Part III.

I.

This investigation was initiated when the Chief Judge of the Ninth Circuit entered an order on February 3, 2000, identifying a complaint of judicial misconduct. The order recited that the complaint against Judge McDonald was based on "the allegations detailed in several recent news stories that the judge made disparaging comments about people in his courtroom." Beginning in January 2000, newspapers had reported that Judge McDonald and his courtroom deputy had exchanged a series of notes in court, commenting about litigants and lawyers. Some of the quoted notes were interpreted in newspaper reports as being disparaging to African Americans, Hispanics, Mormons, Jews, and Chinese people.

Pursuant to Misconduct Rule 4(e), Judge McDonald was afforded an opportunity to respond to the complaint. Judge McDonald noted that most of the notes were made public by his former court reporter, who had been terminated by the district court some years earlier and

DEF02373

had filed suit against Judge McDonald and the Clerk of Court. The suit was dismissed. The notes were released to a reporter shortly before the U.S. Supreme Court denied certiorari review.

Thereafter, on March 21, 2000, the Chief Judge filed with the Council an order appointing this Special Committee, pursuant to 28 U.S.C. § 372(c)(4)(A) and Misconduct Rule 4(e), to investigate the charges in the Order Identifying a Complaint of Judicial Misconduct and to make a report and recommendation to the Judicial Council.

On April 4, 2000, a second complaint of judicial misconduct was filed. The complainant was the Mexican American Legal Defense and Education Fund ("MALDEF"). The complaint alleged that "Judge McDonald's remarks and his tolerance of offensive comments by staff" constituted conduct prejudicial to the effective and expeditious administration of the business of the courts. The MALDEF complaint referred to the same news articles referenced in the original complaint. On April 26, 2000, the Chief Judge entered an order consolidating the two complaints, pursuant to Misconduct Rule 4(i).

The Committee conducted an investigation, which included review of the available print media articles, review of a series of notes written by Judge McDonald or his staff, correspondence from Judge McDonald and his counsel concerning the notes and the allegations of misconduct, a meeting with Judge McDonald and his counsel, an interview with a representative of MALDEF, and interviews with and review of written materials from a number of judges, current and former court personnel, and local attorneys. In all, 18 people were interviewed in person or by telephone.

During the course of the investigation, the Washington State Bar Association issued a statement criticizing Judge McDonald for allegedly writing disparaging notes in court, and Representative John Conyers introduced a Congressional resolution condemning Judge McDonald for "bringing the appearance of improper racial, ethnic and religious bias upon the federal judiciary."

II.

The notes that are the subject of both complaints first came to light in a January 2000 newspaper article. Although most of the notes were obtained from Judge McDonald's former court reporter, some of them came from an attorney who removed them from a courtroom wastebasket after court had recessed. The notes are not dated, but the evidence indicates that they date from the latter half of the 1980's to perhaps as recently as three years ago. Judge McDonald himself stated that he and staff members passed "literally thousands" of notes over a period of 12 or 13 years.

It is undisputed that the notes supplied to the Committee were either written by Judge McDonald on the bench, or by his former courtroom deputy, in the courtroom. Some notes were passed to or from him to his staff, while others were exchanged between his former courtroom deputy and his former court reporter without being seen by him. Judge McDonald said that most notes dealt with courtroom business such as scheduling and were a matter of necessity. He further indicated that sometimes the notes between his deputy and him "would include comments on the way cases developed, the interesting incidents that would occur, the performance of counsel or a witness and on occasion some effort at humor or jest to break the tedium of long court days."

It is also undisputed that a note stating "It smells like oil in here - too many Greasers" was written by the courtroom deputy during a trial with Hispanic defendants and lawyers present, and was not shown to Judge McDonald prior to this investigation. Furthermore, although there was evidence that the courtroom deputy told racial jokes at times, there was no evidence that Judge McDonald was ever aware of her remarks. Indeed, Judge McDonald stated that his deputy was aware that such conduct would not be tolerated by him, based on his earlier disciplinary counseling of a court secretary who made a racially insensitive remark in chambers. The courtroom deputy confirmed during the Committee interview that Judge McDonald would not tolerate such conduct.

Among the notes reviewed by the Committee were the following:

(1) "Old shoeless Jesse is going to argue – Hey that was signed after I was hired – So how can I be bound –That's Nancy's bias, too But – all of his claim re [unknown] is evidence by what he heard after he came to work, too!"

(2) "Ah is im po tent!"

(3) [Deputy] "He's been a con man for a long time! [Judge] Yes and in my experience, a Mormon money man makes the Jews & Chinese look like rank amateurs! [Deputy] That doesn't sound right to me – [Judge] Mormons never cheat steal lie or use birth control (my daughter Sara went to Ricks College too!"

(4) "Guys in Black suits are union mafia
Don't they look like gangsters
why would any"

(5) "Wm. Powell looks like a cadaver with his eyes open! He needs some sun (or gin!)"

(6) [Judge] "Rice (as in Rice Aroni) tells Nancy that his rebuttal will take us into next week at least most of Monday! If so we certainly are going to quit at noon tomorrow. [Deputy] Why didn't he tell us that yesterday in chambers?? [Judge] Because he is a devious little bastard."

The circumstances of these notes, and the notes themselves, were carefully reviewed by the Committee with Judge McDonald and counsel, his former court reporter and counsel, his former courtroom deputy, and lawyers who appeared before Judge McDonald. Regarding the "old Shoeless Jesse" reference, Judge McDonald was quite confident that this note was written to himself. The plaintiff in that case was an African American named Jesse Jackson. Judge McDonald said the reference was not to race, but rather to the white baseball player Shoeless Joe Jackson. The note stating "Ah is Im potent" was written by Judge McDonald during or immediately following testimony by an African American witness. There is some dispute as whether this note was written to himself or passed to the courtroom deputy. Judge McDonald stated that it was a reference to himself, and one that he frequently made in a self-

deprecating way. He said that it did not refer to the witness, whom he said was likable and had not come across as self-important in his testimony.

The note referencing Mormons began with a statement written by the courtroom deputy that was responded to by the judge during the testimony of a Mormon witness. Judge McDonald told the Committee that his daughter is a Mormon, that the note went on to reference that fact, and that he meant no insult to any of the identified groups. The "mafia" reference was a note by the judge to himself, conveying that the trial lawyer should not have permitted his clients to appear in court dressed in a stereotypical manner. The notes referencing attorneys Powell and Rice were personal comments about their appearance and performance. In addition, there were a number of notes written in court by the judge commenting on the appearance or performance of certain other attorneys and witnesses, as well as several notes exchanged with his courtroom deputy that were aptly characterized in the press as constituting "offensive banter."

All interviewees - judges, court personnel, and public and private attorneys who appeared repeatedly before Judge McDonald, including several Hispanic attorneys - told the Committee that they never witnessed any racial, religious, or ethnic bias of the judge, either in or outside of the courtroom. One judge noted Judge McDonald's efforts to include additional questions about bias on the court's jury questionnaire, in order to ensure impartiality of juries, and two judges noted Judge McDonald's support for increased hiring of minorities and women by the probation department.

III.

Disciplinary action is appropriate when a judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 372(c). Canon 2 of the Code of Conduct for United States Judges provides guidance by stating: "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities." Subsection A of Canon 2 explains that: "A judge should . . . act at all times in a

manner that promotes public confidence in the integrity and impartiality." Canon 3A(3) of the Code further provides that: "A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of those subject to the judge's control . . . ."

It must be reiterated that the evidence indicates and the Committee specifically finds that Judge McDonald is not and was not biased against any ethnic, racial, or religious group. Nonetheless, the Committee concludes that Judge McDonald on occasion violated the statutory standard of conduct by his practice, and by his condoning the practice among his courtroom staff, of writing and exchanging in open court, notes that could reasonably be interpreted as reflecting bias. Regardless of their intent as to meaning or audience, they certainly created an appearance of impropriety, undermined the public's confidence in an impartial judiciary, and impugned the dignity and seriousness of the ongoing court proceedings. For these reasons, the Committee concludes that more than a private reprimand is warranted.

The Committee therefore recommends that the Judicial Council issue a public reprimand to Judge McDonald for engaging in conduct in open court that both created an appearance of impropriety and violated Canons 2A and 3A(3).

Respectfully submitted,

Thomas G. Nelson, Circuit Judge, Chair
Proctor Hug Jr., Chief Circuit Judge
Mary M. Schroeder, Circuit Judge
Terry J. Hatter, Chief District Judge (C.D. Cal.)
Michael R. Hogan, Chief District Judge (D. Ore.)

Special Committee

FILED
AUG - 7 1998
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

In re Charge of	)	No. 97-80629
	)	ORDER AND
Judicial Misconduct	)	MEMORANDUM
	)	
	)	

Before: HUG, Chief Judge, SCHROEDER, THOMPSON, NELSON, and SILVERMAN,* Circuit Judges; LODGE and HOGAN, Chief District Judges; and KEEP and EZRA, District Judges.

On November 25, 1997, a complaint of judicial misconduct was identified by the Chief Judge against District Judge James Ware. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. § 372(c).

Pursuant to 28 U.S.C. § 372(c)(4)(A) and Rule 4(e), the Chief Judge appointed a special committee to investigate press reports that Judge Ware publicly misrepresented himself as the James Ware whose younger brother, Virgil, was shot and killed in 1963 while both were riding a bicycle in Birmingham, Alabama. This matter comes before the Council upon the filing of the Special Investigative Committee's report.

*Sitting in lieu of Judge Michael Daly Hawkins.

DEF02379
PORT Exhibit 1111 (k)

After due consideration of the special committee's report, the Council adopts the findings and recommendations of the committee majority and attaches as a part of this order that report and a dissent. For the reasons stated by the committee majority, the Council reprimands Judge Ware for his conduct, having concluded that such conduct is prejudicial to the effective administration of the business of the courts.

This order shall be made public. 28 U.S.C. § 372(c)(6)(B)(vi); Misconduct Rule 14(f)(1).

Dated this 5th day of August, 1998.

JUDICIAL COUNCIL OF THE NINTH CIRCUIT

Mary M. Schroeder, Circuit Judge	Michael R. Hogan, Chief District Judge
David R. Thompson, Circuit Judge	Edward J. Lodge, Chief District Judge
Thomas G. Nelson, Circuit Judge	Judith Keep, District Judge
Barry Silverman, Circuit Judge	David A. Ezra, District Judge

Procter Hug, Jr., Chief Judge, Ninth Circuit Courts

DEF02380

FILED
JUN 29 1998
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL FOR THE NINTH CIRCUIT
In Complaint of Judicial Misconduct
No. 97-80629

Report and Recommendation of the Special Investigative Committee

This report is submitted to the Judicial Council of the Ninth Judicial Circuit by the Special Investigative Committee appointed by the Chief Judge to investigate the claim of judicial misconduct filed against District Judge James Ware of the Northern District of California. The Report is made pursuant to the authority of 28 U.S.C. § 372(c) and the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability. This Committee recommends that the Judicial Council publicly censure and reprimand Judge James Ware for engaging in conduct prejudicial to the effective and expeditious administration of the business of the courts. The procedural history of this complaint and the events leading to it are set forth in Part I, below; the findings of this Committee are set forth in Part II and the reasons for the Committee's recommendations are set forth in Part III.

I.

This investigation was initiated when the Chief Judge of the Ninth Circuit entered an order on November 25, 1997, identifying a complaint of judicial misconduct. The order recited that the basis for the complaint against Judge Ware was "his recent admission that he had falsely misrepresented in numerous speeches and interviews that he was the James Ware whose younger brother, Virgil, was shot and killed in 1963 while both were riding a bicycle in Birmingham, Alabama."

That order was prompted by a number of events that were reported widely in the media. Judge Ware had been nominated in 1997 for elevation from the District Court to the Court of Appeals. The Senate Judiciary Committee held its confirmation hearing on October 29, 1997. The nomination was reported in the Birmingham, Alabama press because Judge Ware had been raised in that city. An earlier speech by Judge Ware had been televised nationally in which he described how, while he was pedaling a bicycle in Birmingham, Alabama, in 1963, his brother, Virgil, was shot off the handlebars and killed by white youths. Judge Ware's speech described the event as having occurred on the same day that four black girls had been killed in the bombing of the Sixteenth Street Baptist Church in Birmingham. Also reported in the Birmingham press in 1997 was the reopening of the investigation of the 1963 Sixteenth Street Baptist Church bombing. These reports included an interview with James Ware, a power plant employee living in Birmingham, who was the true brother of the Virgil Ware killed in 1963. During the first week of November 1997, family members of Virgil Ware publicly disputed Judge Ware's claims that he was the brother of the Virgil Ware killed in 1963.

On November 6, 1997, Judge Ware withdrew his nomination in a public statement admitting that he had publicly misrepresented being the James Ware whose brother was killed in 1963.

On December 5, 1997, the Chief Judge filed with the Council an order appointing this Special Investigative Committee, pursuant to 28 U.S.C. § 372(c)(4)(A) and Misconduct Rule 4(e), to investigate the charges in the Order Identifying a Complaint of Judicial Misconduct and to make a report and recommendation to the Judicial Council.

The Committee conducted an investigation which included review of the available print media articles, correspondence received by the Chief Judge and Judge Ware concerning the misrepresentations, and interviews with Judge Ware, Mr. James Ware of Birmingham, and District Judge U. W. Clemon of Birmingham. The Committee also reviewed the transcripts of the Senate Judiciary Committee hearings on both Judge Ware's district court and circuit court nominations, as well as the "Questionnaire for Sensitive Positions" (OPF Form 86) that he submitted in connection with each application.

II.

The most comprehensive information about the facts underlying the subject matter of the complaint is possessed by Judge Ware. In its review of Judge Ware's written statements, its personal questioning of him under oath, and interviews of other affected individuals, the Committee found no significant inconsistencies or disagreements about the origins of Judge Ware's admitted misrepresentations, their nature, the manner in which they came to public light, and what Judge Ware did by way of making amends to the family that suffered the tragic loss of Virgil Ware in 1963.

Judge James Ware was born in Birmingham, Alabama, in 1946. His immediate family included an older sister, a younger sister, and a brother, Webster. While he was growing up, he heard his father discuss the existence of other relatives in the Birmingham area named Ware. At the time that Virgil Ware was killed in 1963, Judge Ware stated that he was struck by the similarity of ages between himself and his brother, Webster, and between Virgil Ware and James Ware. After his mother's death, Judge Ware learned that his father had had a second family in the Birmingham area. Judge Ware stated that he came to believe that he may have been related to the Virgil Ware who was killed in 1963.

Judge Ware left Alabama in the mid 1960s to attend college in California. He remained in California throughout college and law school, graduating from Stanford Law School in 1972. Judge Ware states that he has no recollection of ever representing to anyone during that period that he was the brother of the murdered Virgil Ware, and there are no reports of any public statements by him to that effect. He states, however, that his college roommate went on a visit with him to Alabama in 1968 and, according to Judge Ware, his roommate recalls hearing him say during that visit that he probably had a half brother named Virgil.

After graduating from law school in 1972, Judge Ware went into private practice. The first public speech he recalls referring to the 1963 tragedy was a public forum in 1973. Judge Ware states that in researching civil rights history for that presentation he found a description of Virgil Ware's death. He read the description to the group. He concluded the presentation with what he recalls as an ambiguous statement that "this James Ware stands with you today committed to civil rights." Judge Ware realized that, although his statement was made for dramatic effect, it could have given the erroneous impression that Judge Ware was the James Ware who was on the bicycle in 1963. Although Judge Ware states that he regrets giving that impression, he did not take any steps to correct it. The meeting in 1973 was not publicly reported.

Judge Ware was confirmed to the district court bench in 1990. The Committee has found no evidence that Judge Ware ever told anyone involved with his 1990 nomination and confirmation to the district court about the 1963 tragedy in Birmingham or that anyone involved in that process had any knowledge of any misrepresentations Judge Ware made prior to 1990 about that episode.

In 1994, when Judge Ware was on the district court bench, a reporter related to the organizer of the 1973 forum asked for an interview with Judge Ware. During the course of the interview, she asked Judge Ware to repeat the Virgil Ware story that had first been heard back in 1973. Judge Ware stated to the Special Investigative Committee that he told the story in the first person, misrepresenting himself as the James Ware on the bicycle in 1963 in that interview in order to be consistent with earlier speeches that he had given.

In 1996, Judge Ware attended a conference of federal judges and practitioners in the Napa Valley. He was called upon to appear as a last minute replacement on a panel discussing the Civil Rights movement of the '50s and '60s. As part of that presentation, Judge Ware gave a dramatic first person description of the murder of Virgil Ware as seen through the eyes of his brother, James Ware. The event is vividly remembered by those in attendance and left no doubt with the audience that Judge Ware was describing himself as the James Ware on the bicycle. After that time, Judge Ware was asked to repeat the story, and he did so. Judge Ware stated to the Committee that he used the story to convey his strong feelings about the struggle of the Civil Rights Movement and that he was aware at all times that he was misrepresenting his relationship to the events in Birmingham.

Judge Ware was nominated by President Clinton to the Ninth Circuit Court of Appeals in 1997. In filling out the "Questionnaire for Sensitive Positions," known as OPM Form 86, which must be completed by all presidential nominees, Exec. Order No. 10450, Judge Ware was asked to list all relatives. He listed "Virgil Lamar Ware" as his only half brother. Judge Ware stated to the Committee that he listed Virgil because he had been advised by a member of the White House staff to be over inclusive in filling out the questionnaire. Judge Ware stated that he was now aware that he listed Virgil Ware in an effort to be

consistent with the way he had presented himself publicly, but that at the time he believed that he may well have been related to a Virgil Ware in Birmingham. There is no evidence that Judge Ware ever repeated the Virgil Ware story or asserted any relationship to Virgil Ware during interviews for the Ninth Circuit position. The subject did not come up at his confirmation hearing in October 1997.

By late August 1997, District Judge U. W. Clemon of the Northern District of Alabama had learned that Judge Ware had been nominated for the Ninth Circuit through a newspaper article in the *Birmingham World*. Judge Clemon also had knowledge of Judge Ware's version of the 1963 events from viewing a C-SPAN telecast of one of Judge Ware's speeches. Judge Clemon had also recently seen an article in a different newspaper, the *Birmingham News*, commemorating the events of 1963, including the murder of Virgil Ware. The article included a photograph of Virgil's brother, James Ware of Birmingham, who had been on the bicycle.

Realizing that Judge Ware had made serious misrepresentations and was now being considered for a higher judicial post, Judge Clemon communicated his concerns to Chief Judge Thelton Henderson of the Northern District of California. He also endeavored to contact Judge Ware, who was on vacation.

Unfortunately, the newspaper article in the *Birmingham World* describing Judge Ware's nomination had erroneously included a photograph of someone other than Judge Ware, and Judge Ware had seen that article. Judge Ware did not know, however, in August and September of 1997, about the article and photograph of Mr. James Ware in the *Birmingham News*, describing Mr. Ware's role in the 1963 tragedy.

In early September when Judge Clemon first reached Judge Ware to convey his concerns that Judge Ware had misrepresented his identity, Judge Clemon referred to a recent newspaper article. Judge Ware assumed that Judge Clemon was referring to the article in the *Birmingham World* about his nomination that contained the wrong picture. When Judge Ware told Judge Clemon that he must be referring to the article with the "wrong picture," Judge Clemon erroneously assumed that Judge Ware was referring to the *Birmingham News* article concerning the Birmingham James Ware and was, in effect, denying that he had made any misrepresentations concerning his own identity. Judge Clemon then contacted Chief Judge Henderson to express his concerns regarding what he viewed as Judge Ware's apparent denial of misconduct. When Chief Judge Henderson spoke with Judge Ware, he received exactly the same response about the "wrong picture" as Judge Clemon had received. Judge Henderson also mistakenly believed that Judge Ware was denying any misconduct.

Judge Clemon reported the entire matter to Mr. James Ware and his family in Birmingham. As a result of miscommunications, Judge Clemon and the Birmingham Ware family mistakenly believed that Judge Ware had been confronted with Judge Clemon's knowledge of the misrepresentations and that Judge Ware had refused to admit to any wrongdoing.

Faced with the apparent denial by Judge Ware, Judge Clemon discussed the situation in a routine court meeting in Birmingham on October 30. This prompted one of the district judges to communicate directly with Senator Sessions, a member of the Senate Judiciary Committee. At this point, Judge Ware was confronted directly and for the first time with the fact that his misrepresentations were now a matter of public knowledge. On

November 6, 1997, Judge Ware publicly admitted his misrepresentations and withdrew his nomination for the Court of Appeals.

On November 7, 1997, Judge Ware made plane reservations to go to Birmingham to apologize to the Ware family. Judge Ware also asked to see Judge Clemon to express his regrets and explain the misunderstandings concerning Judge Ware's silence in the time that elapsed since Judge Clemon communicated with Judge Henderson in August. Judge Ware arrived in Birmingham on November 9, accompanied by his son, where he met with Judge Clemon and James Ware and his brother Melvin Ware. Judge Ware and Judge Clemon discussed the chronology of the newspaper article confusion, reaching a mutual understanding of the facts surrounding the miscommunications. Judge Ware apologized to Judge Clemon for the inconvenience and difficulties he had caused. More important, Judge Ware apologized to the Ware brothers in Birmingham, who graciously accepted the apologies. James Ware has told the Committee that he believed Judge Ware's apologies were sincere, and that he believed Judge Ware had not deliberately set out from the beginning to misrepresent his identity. Nevertheless, the Ware family remains understandably saddened that Judge Ware did not put an early end to the misunderstandings he had fostered.

III.

Disciplinary action against a judge is called for when a judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 372(c). Canon 2 of the Code of Conduct for United States Judges provides guidance by stating: "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities." Subsection A of Canon 2 explains that: "A judge should

respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

The Committee concludes that Judge Ware has violated the statutory standard by knowingly misrepresenting his relationship to the tragic events in Birmingham. The misrepresentations reflect negatively not only on Judge Ware's integrity, but quite possibly have had a regrettable effect on public confidence in the Judiciary. The Committee is also sensitive to the acute pain inflicted on the Birmingham Ware family by Judge Ware's public exploitation of their very private grief.

Because of the very public nature of the original tragedy and the public nature of the misrepresentions, as well as their discovery, it is important that discipline of Judge Ware be public and a part of the historical record. For these reasons, the Committee concludes that more than a private reprimand is called for.

We find no indication, however, that the conduct here under discussion, all of which occurred off the bench, had any effect on the judge's otherwise highly regarded abilities as a judge. The Committee therefore does not recommend reducing or withdrawing the judge's judicial caseload.

There remains the question of whether there is in the record sufficient indication of impeachable conduct to warrant the Council's forwarding the matter to the Judicial Conference of the United States pursuant to 28 U.S.C. § 372(c)(7)(A). The making of false statements, even in public, is not criminal activity. Judge Ware did not reap material reward from his misstatements. A criminal statute of the United States does, however, proscribe the making of a material false statement to a government agency, when the statement is made knowingly and wilfully. 18 U.S.C. § 1001. Judge Ware made no statement to any

government agency that he was the James Ware who rode the bicycle in 1963. Judge Ware did state under oath in his 1997 OPM Form 86 that he had a half brother named Virgil Ware. Judge Ware has credibly stated to the Committee that at various times in his life he came to believe that he might have had a half brother named Virgil and that he knew that his father had family members with whom he was unacquainted. Although Judge Ware now acknowledges that the belief had little if any corroboration, it is not clear that Judge Ware knowingly and wilfully made a material false statement at the time he completed the OPM Form 86.

For the foregoing reasons, the Committee recommends that the Judicial Council issue a public reprimand to Judge Ware for falsely misrepresenting in numerous speeches and interviews that he was the James Ware on the bicycle with a younger brother, Virgil, who was shot and killed in Birmingham, Alabama, in 1963.

Respectfully submitted,

Mary M Schroeder

Mary M. Schroeder, Circuit Judge, Chair

Procter Hug, Jr., Chief Circuit Judge
Alfred T. Goodwin, Senior Circuit Judge
Terry Hatter, Chief District Court Judge,
(C.D. Cal.)
John Coughenour, Chief District Court Judge,
(W.D. Wash.)
Special Investigative Committee

Dissent of Judge Coughenour:

I must respectfully dissent from the recommendation of my fellow members of the Special Investigative Committee that Judge Ware be publicly censured and reprimanded.

While I concur with the factual recitation of the events which are the subject of this investigation, I cannot, for several reasons, agree that censure or reprimand is necessary. First, the family of Virgil Ware has, with profound grace, accepted the apology of Judge Ware, and stated that they believe he has suffered enough. Second, Judge Ware has publicly and forthrightly acknowledged his error, and apologized to the family of Virgil Ware. Third, Judge Ware made the statements about the Virgil Ware tragedy as part of an effort to heighten the public's awareness of the evil of racial hatred, and not for any personal gain or as part of any judicial function. Last, Judge Ware has already suffered serious public embarrassment over this episode and, in my view, no purpose would be served by adding to this burden.

For these reasons, I dissent from the conclusion of the majority.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT 9 1990
MIGUEL J. CORTEZ
CLERK

BEFORE THE JUDICIAL COUNCIL

OF THE ELEVENTH CIRCUIT

Miscellaneous Docket No. 88-210

IN THE MATTER OF A COMPLAINT FILED BY
GEORGIA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS AND NATIONAL
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Judicial Complaint Pursuant to 28 U.S.C. § 372(c)

ORDER

This order is issued by the Judicial Council of the Eleventh Judicial Circuit in the exercise of its authority under 28 U.S.C. § 372(c)(6)(B)(vi) to censure or reprimand a judge or magistrate by means of public announcement for engaging in conduct prejudicial to the effective and expeditious administration of the business of the courts. In this case, the Judicial Council publicly censures and reprimands the Honorable John W. Dunsmore, a United States Magistrate of the Southern District of Georgia. The conduct giving rise to this action by the Judicial Council is set forth in part I below; the reasons therefor are set forth in part II.

I.

The conduct giving rise to the Judicial Council's action in this matter took place on March 31, 1988. On that date,

PORT Exhibit 1111 (I)

Magistrate Dunsmore was in Savannah, Georgia, to hear the government's application for an injunction in United States v. Blackshear. In that case, Tony Blackshear had been charged with six violations of federal law for trafficking cocaine, and the government was seeking the forfeiture of assets he had allegedly acquired with money derived from the criminal activity. On March 4, 1988, following Blackshear's arraignment, the district court had entered a temporary restraining order to prevent Blackshear from disposing of those assets and had directed Magistrate G. R. Smith to hear the government's application to convert the temporary restraining order into a preliminary injunction. Magistrate Smith noticed a hearing on the government's application for March 18, but, on March 17, continued the hearing to March 31, at 10:00 a.m., because Blackshear's attorney, Chevene B. King, Jr., was unavailable. Mr. King's father had passed away earlier in the week, and Mr. King was in the process of arranging the funeral and attending to his family's needs. On March 29, Magistrate Smith, concluding that it would be inappropriate for him to handle the government's application for a preliminary injunction (because he had been in the United States Attorney's office while the Blackshear case was being processed for indictment), asked Magistrate Dunsmore, who was assigned to the Augusta Division of the Southern District of Georgia, to take the March 31 hearing. Magistrate Dunsmore agreed to do so, and on March 30 drove to Savannah for that purpose.

On March 29, after he agreed to handle the March 31 hearing, Magistrate Dunsmore learned that Blackshear's attorney, Chevene B. King, Jr., was engaged in the trial of a criminal case in Brunswick, Georgia, in the state superior court, and that there was a good chance that the trial would continue into March 31 and thus prevent Mr. King from appearing in Savannah for the injunction hearing that day. Mr. King said he would try to have his associate attend the hearing in Savannah and Magistrate Dunsmore understood that either Mr. King or his associate would cover the hearing in Savannah.

On March 31, a few minutes before the injunction hearing was to begin, the district court clerk's office in Savannah informed Magistrate Dunsmore that Mr. King was still in trial in Brunswick and that the lawyer (an associate in his law firm) he had hoped would be available for the hearing would not be attending the hearing because he was tied up in state court--in a criminal case--in Albany, Georgia. Upon hearing this, Magistrate Dunsmore called the superior court judge presiding over the criminal trial in Brunswick and confirmed that the trial was still in progress and that Mr. King would not be able to get to Savannah in time for the injunction hearing. The judge asked Magistrate Dunsmore if he would like to speak to Mr. King, who was standing nearby, and Magistrate Dunsmore stated that he would not. Magistrate Dunsmore then told the judge that he would be sending two deputy U. S. Marshals to Brunswick with instructions to bring Mr. King to Savannah as soon as the trial was over and to relay this

information to him. The judge relayed this message to Mr. King, and the trial resumed--with counsel's closing arguments to the jury.

After he made this telephone call, Magistrate Dunsmore ordered the U. S. Marshals Service in Savannah to go to Brunswick and bring Mr. King to Savannah when the trial there was over. The Marshals Service told Magistrate Dunsmore that, if it was to carry out his order, it would have to take Mr. King into custody and secure him with handcuffs and chains as mandated by the applicable U. S. Marshals Service procedures. Magistrate Dunsmore instructed the Marshals Service to proceed in that fashion--if that is what their procedures required--but to be discreet in the manner in which it handled Mr. King. Thereafter, two deputy Marshals went to Brunswick--to the courtroom where the trial Mr. King was engaged in was in progress. After the jury returned its verdict, the deputies took Mr. King into custody, placed him in handcuffs and chains, and drove him to Savannah--to Magistrate Dunsmore's courtroom. There, pursuant to Magistrate Dunsmore's instructions, they removed the handcuffs and chains; thereafter, Magistrate Dunsmore entered the courtroom, assumed the bench, and began the hearing on the government's application for a preliminary injunction in the Blackshear case. At this point, Mr. King interrupted the magistrate, stating that, in view of what had transpired, he was in no condition to give his client the competent professional representation he was due. Magistrate Dunsmore, responding, announced that the hearing on the

government's application would continue and that the matter of Mr. King's arrest would be taken up later. Mr. King then asked for a recess, so that he could obtain counsel for his client, and at 2:40 p.m. Magistrate Dunsmore declared a recess. During the recess, Mr. King contacted Fletcher Farrington, a Savannah lawyer, and when Magistrate Dunsmore resumed the injunction hearing, at 3:30 p.m., Mr. Farrington was present, with Mr. King. Mr. Farrington moved Magistrate Dunsmore to recuse himself, contending that his conduct toward Mr. King that day rendered him disqualified to preside over the Blackshear matter. Magistrate Dunsmore denied the motion, continued the hearing, and, when it was finished, granted the government's application for a preliminary injunction. Magistrate Dunsmore then declared a recess, stating that he would take up the matter concerning Mr. King that evening.

At 6:25 p.m., the court reconvened, so that Magistrate Dunsmore could decide what to do about Mr. King. Present, in addition to the magistrate, were Mr. King, his attorney Fletcher Farrington, and William H. McAbee, an assistant United States Attorney. Magistrate Dunsmore opened the proceeding with a brief statement for the record, and, then, asked Mr. King "to explain to [him] what [had] happened." He told Mr. King that he lacked the authority to hold him in contempt of court, but that he "could certify facts to [United States District] Judge Edenfield and ask that he hold a hearing to show cause as to whether [King] should be found in contempt of Court." He said that he intended

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to make such certification "unless [King gave him] some facts . . . to indicate that [he] should not make that certification to Judge Edenfield." Mr. Farrington responded for Mr. King. He suggested that Magistrate Dunsmore had assumed the role of the prosecutor in the matter and should not, in addition, assume the role of the judge, take evidence, and decide the case. A colloquy with counsel ensued, and Magistrate Dunsmore decided to certify the matter to Judge Edenfield. On April 4, he did so. In his certification, Magistrate Dunsmore stated that he "fully expected that Mr. King would provide an associate [counsel] or himself appear" at the March 31 hearing"; Magistrate Dunsmore then found that, when Mr. King realized that he could not attend the hearing, his failure "to provide . . . associate counsel for the . . . hearing" amounted to "an act of contempt for the orders of this Court." Judge Edenfield subsequently held a bench trial--to determine whether Mr. King should be convicted of criminal contempt for his failure to have an associate at the March 31 hearing--and, after considering the evidence and argument of counsel, found Mr. King not guilty.

II.

The Judicial Council concludes that a public censure and reprimand is necessary in this case for the following reasons.

First, Magistrate Dunsmore had no authority to order the U. S. Marshals Service to arrest Mr. King on March 31, 1988. Magistrate Dunsmore did have the authority to issue a warrant for

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Mr. King's arrest if presented with a written complaint, made upon oath before him, charging Mr. King with a federal offense, see Fed. R. Crim. P. 3, but no one had presented him with such a complaint. If Magistrate Dunsmore believed that Mr. King had acted contumaciously and should be sanctioned for contempt of court, all that he could do was to "certify the facts [constituting the contempt] to a judge of the district court . . . and serve or cause to be served [upon King] an order requiring [him] to appear before a judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified," 28 U.S.C. § 636(e).

Second, during his March 31 conversation with the superior court judge who was presiding over the trial in Brunswick, Magistrate Dunsmore learned that the case would go to the jury that morning after the prosecutor and Mr. King delivered their closing arguments to the jury. Magistrate Dunsmore also knew that, prior to delivering his closing argument to the jury, Mr. King learned that two deputy U. S. Marshals would be taking him into custody immediately after the jury returned its verdict.

Third, in making Mr. King proceed with the injunction hearing after the deputy U. S. Marshals had brought him--handcuffed and chained--to the courthouse in Savannah, Magistrate Dunsmore also disregarded the rights of Mr. King's client, Tony Blackshear. Under the circumstances, Mr. King was in no condition to render his client the effective assistance of

counsel due him under the sixth amendment to the United States Constitution--a right Magistrate Dunsmore had a duty to protect.

Fourth, in asking Mr. King, when court reconvened at 6:25 p.m. on March 31, to explain what had happened--in effect, to show cause why he should not be cited for criminal contempt--Magistrate Dunsmore exceeded his authority. He knew that, under 28 U.S.C. § 636(e), all that he could do--if he thought that Mr. King's conduct in not providing associate counsel to cover the injunction hearing that morning constituted criminal contempt--was to certify the facts constituting the contempt to the district court.

In summary, the Judicial Council concludes that Magistrate Dunsmore in dealing with Mr. King's inability to appear, or to obtain counsel to appear for him, at the March 31 injunction hearing exhibited a degree of insensitivity for the rights of a member of the Bar and his clients, that cannot be tolerated. There was no reason whatever for taking Mr. King into custody. If it was not clear to Magistrate Dunsmore that he was taking some drastic action against Mr. King in the matter, it should have become clear when the Marshals Service informed Magistrate Dunsmore that it would have to place Mr. King in handcuffs and chains if it carried out his directive to seize Mr. King and bring him to Savannah. When he instructed the Marshals Service to proceed, Magistrate Dunsmore in effect, if not in fact, directed the Marshals Service to handcuff and chain Mr. King and to subject him to the personal and public humiliation he

eventually suffered. Such treatment of a member of the Bar by a magistrate cannot be accepted if the bench and bar of the federal courts are to adequately administer justice to the citizens of this nation.

It is, accordingly, ordered that the Chief Judge of the United States District Court for the Southern District of Georgia cause this order to be filed with the clerk of that court in Augusta, Georgia, and that the clerk make the same available to the public.

FOR THE JUDICIAL COUNCIL

Chief Judge
of the Eleventh Judicial Circuit

Dated: October 8, 1990

DEF02400

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Citation: 644 f.2d 351

*644 F.2d 351, *; 1981 U.S. App. LEXIS 14089, **

Louis HAMILTON et al., Plaintiffs-Appellees, v. Ernest N. MORIAL, Mayor et al., Defendants-Appellants; Louis HAMILTON et al., Plaintiffs-Appellees, v. Ernest N. MORIAL, Mayor of the City of New Orleans et al., Defendants-Appellees; Oliver HOWARD et al., Plaintiffs-Appellees, v. C. Paul PHELPS et al., Defendants-Appellants.

Nos. 80-3392, 81-3111, 81-3146

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT. UNIT A

644 F.2d 351; 1981 U.S. App. LEXIS 14089

April 21, 1981

PRIOR HISTORY: **[**1]** On Petition for Writ of Mandamus.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant Louisiana Department of Corrections sought a writ of supervisory mandamus in an effort to stay further proceedings in federal district courts within the State of Louisiana, for cases dealing with interrelated issues of unconstitutional overcrowding in the state penitentiary, parish prisons, and parish and city jails.

OVERVIEW: Throughout the state of Louisiana, numerous lawsuits were instigated concerning issues related to unconstitutionally overcrowded conditions in the state prisons for the purpose of protecting the constitutional rights of inmates in the state penitentiary, parish prisons, and all jails throughout the state. Appellant Louisiana Department of Corrections sought to consolidate those actions and sought a writ of supervisory mandamus with the purpose of staying further proceedings in federal district courts. A panel of the court granted a stay pending appeal and consolidated the cases. The court granted the writ, finding that appellant had asserted proper grounds for such. The court held that it had jurisdiction to order such a writ as was delegated by Congress. Meeting the requirements of that delegation, the court found that it had an independent basis for exercising its jurisdiction to issue the writ and that the issuance of such writ would aid in its jurisdiction. The court ordered that all such prison overcrowding cases were to be heard in one district court in order to achieve uniformity in the application of justice.

OUTCOME: The court granted a writ of supervisory mandamus on behalf of appellant Louisiana Department of Corrections and stayed further proceedings concerning jail overcrowding when it determined that it had an independent basis for jurisdiction and that the issuance of such writ would aid in jurisdiction. The court assigned all related cases, both current and future, to be heard by a designated district court in order to achieve uniformity in justice.

CORE TERMS: prison, jail, inmate, state penitentiary, overcrowding, transferred, issue writs of mandamus, writ of mandamus, pending appeal, consolidation, interrelated, Penitentiary, supervisory, overcrowded, coordinated, alleviate, entertain, prisoners, issuance, maximum, backup, decree, moot, state prisoners, action pending, constitutional rights, future action, consolidated, assigned, unified

LEXISNEXIS® HEADNOTES Hide

Civil Procedure > Remedies > Writs > All Writs Act
Governments > Courts > Creation & Organization
HN1 See 28 U.S.C.S § 1651.

Civil Procedure > Jurisdiction > Jurisdictional Sources > General Overview
Civil Procedure > Remedies > Writs > All Writs Act
Civil Procedure > Remedies > Writs > Common Law Writs > Mandamus
HN2 Under 28 U.S.C.S § 1651, the court of appeals must have an independent basis of jurisdiction for the issuance of a writ of mandamus and that the writ must issue in aid of that jurisdiction. More Like This Headnote |

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PORT Exhibit 1112

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Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review
HN3 See 28 U.S.C.S. § 2106.

COUNSEL: Galen S. Brown, Deputy City Atty., New Orleans, La., for Morial et al.

Luke Fontana, New Orleans, La., Mark Moreau, New Orleans, Legal Assistance Corp., New Orleans, La., for Hamilton et al.

J. Marvin Montgomery, Asst. Atty. Gen., La. Dept. of Justice, Baton Rouge, La., for Phelps et al.

R. James Kellogg, Robert M. Hearin, Jr., New Orleans, La., for Howard et al.

Richard F. Knight, R. Bradley Lewis, Bogalusa, La., for Robert Lyons.

JUDGES: Before CHARLES CLARK and RANDALL, Circuit Judges, and SHARP * , District Judge.

* District Judge for the Northern District of Indiana, sitting by designation.

OPINION BY: PER CURIAM:

OPINION

[*352] In Cause No. 81-3146, C. Paul Phelps, Secretary of the Louisiana Department of Corrections, has moved this court to issue a writ of supervisory mandamus to stay further proceedings in federal district courts within the State of Louisiana dealing with interrelated issues of unconstitutional overcrowding in the state penitentiary, parish prisons, and parish and city jails. A panel of this court previously granted the stay pending appeal and ordered consolidation of the above-styled and numbered **[**2]** related causes now pending in this court. The court has heard argument of counsel in the consolidated actions.

This court has previously dealt with conditions in Louisiana prisons. In Williams v. Edwards, 547 F.2d 1206, 1219 (5th Cir. 1977), this court approved the judgment of the United States District Court for the Middle District of Louisiana which imposed a limit on the prison population of the Louisiana State Penitentiary at Angola, based upon available space of 80 square feet per inmate, but remanded the action for further consideration of a maximum inmate population for the institution in light of a more complete record which was to be developed. We cautioned that these remand procedures should be accomplished as soon as possible to alleviate the backup of prisoners in parish jails and in other forwarding institutions. Our opinion further specifically directed the district judge's attention to overcrowded conditions in the Orleans Parish and Washington Parish prisons, then and now the subject of pending appeals. See note 9, 547 F.2d at 1219. A maximum limit on the number of inmates was ultimately placed on the Angola Penitentiary. In Hamilton v. Landrieu, Docket No. 77-2087, **[**3]** we received reports from the United States District Court for the Middle District of Louisiana, and the United States District Court for the Eastern District of Louisiana regarding the interrelation of then pending state penitentiary and parish prison and jail **[*353]** litigation. The report of the Eastern District, dated July 11, 1977, concluded with the following paragraph:

> Finally, with the plethora of similar prison cases that are clogging the dockets of the Eastern, Middle and Western Districts of Louisiana, we would urge that the Appellate Court, if at all possible, designate one Court in the State of Louisiana to handle all prison cases, thus eliminating possible conflicts or interpretations as conflicts between the various courts.

The report of the Middle District of Louisiana, dated eight days later, disagreed. No consolidation was effected. The petitioner in this case represents that at the present time 25 Louisiana parish jails either are subject to pending suits concerning or are under court orders imposing limits upon jail populations.

We conclude that litigation in the United States District Courts in the State of Louisiana seeking to protect the constitutional **[**4]** rights of inmates in the state penitentiary, parish prisons and all jails throughout the state due to overcrowded conditions must be considered as a unified whole and not in piecemeal fashion. If coordinated consideration and a unified judicial overview at the trial level is not provided, adequate constitutional protection cannot be accorded either by district courts through individual adjudications or by this court through episodic review of separate cases. The backup of state prisoners in local prisons and jails caused by limits imposed to protect against overcrowding at the state penitentiary may deprive local prisoners of constitutional rights in those prisons and jails. The expense of housing state prisoners in local institutions and the financial burden of providing for their boarding and care impose improper capital costs and operating expenses on local governmental institutions. The alternative of releasing or not imprisoning dangerous criminals is equally unacceptable.

To this time, the Courts have limited relief from unconstitutional overcrowding to prohibitory injunctive measures. The Louisiana legislature, which is now in session, is the political body which can and **[**5]** should deal affirmatively to effect critically needed changes in the entire system. The legislature is in the best position to determine whether and where to provide additional inmate housing or whether and how to establish alternatives to imprisonment for non-violent offenders or both. Working with a single Court will enable the executives charged with administration of these institutions to best advise lawmakers where constitutional minimums will require changes. The magnitude and seriousness of the problem bring with them a challenge to Louisiana to lead the nation in finding the best answers. Consolidating all court actions allows the issues that will not go away to be squarely faced without harassment.

Congress has given this court authority to issue writs of mandamus: "HN1 All courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651.

This court has jurisdiction to entertain the petition for supervisory writ of mandamus in these cases because of the necessity to achieve proper judicial administration in the federal system. **[**6]** LaBuy v. Howes Leather Co., 352 U.S. 249, 259, 77 S. Ct. 309, 315, 1 L. Ed. 2d 290 (1957). See also United States v. Denson, 603 F.2d 1143 (5th Cir. en banc 1979); Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977); Wright, Miller, Cooper & Gressman, Federal Practice and Procedure, Jurisdiction § 3934; 9 Moore's Federal Practice P 110.28. This situation is one that involves extraordinary circumstances which permit extraordinary action. Koehring Co. v. Hyde Const. Co., 382 U.S. 362, 86 S. Ct. 522, 15 L. Ed. 2d 416 (1966). "A part of the extraordinary nature of what is before us is the compelling need to settle a new issue so that it can become only an ordinary issue." United States v. Hughes, 413 F.2d 1244, 1249 (5th Cir. 1968), vacated as moot, 397 U.S. 93, 90 S. Ct. 817, 25 L. Ed. 2d 77 (1970).

HN2 **[*354]** Under 28 U.S.C. § 1651, the court of appeals must have an independent basis of jurisdiction for the issuance of a writ of mandamus and that the "writ must issue "in aid of' that jurisdiction." Wright, Miller, Cooper & Gressman, Federal Practice and Procedure, Jurisdiction § 3932 at 188. The first requirement is met here. While the plaintiffs argue that the appeal in No. 81-3146 **[**7]** is moot and that the order appealed from is non-appealable, there is no dispute that we have independent jurisdiction in the other causes. Further, we will be able to entertain appeals in Howard v. Phelps at some future stage of the proceedings. Thus, we have power "in proper circumstances ... to issue writs of mandamus reaching" that case. LaBuy v. Howes Leather Co., 352 U.S. 249, 255, 77 S. Ct. 309, 313, 1 L. Ed. 2d 290, 296 (1957). That the issuance of the writ will aid our jurisdiction is certain. That it will enable the district court to make and us to enforce a just and consistent judgment in these interrelated cases is equally certain. No other adequate means is available to attain the relief desired. Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 101 S. Ct. 188, 66 L. Ed. 2d 193 (1980). The coordinated procedures we must require here cannot be achieved through review in the course of subsequent appeals. In re Corrugated Container Antitrust Litigation, 614 F.2d 958 (5th Cir. 1980).

To achieve justice under the circumstances, [1] our order must extend to every court under our supervision wherein the problem exists or may arise. We direct any United States district **[**8]** court in the Fifth Judicial Circuit which now has an action pending before it or in which a future action may be filed seeking to alleviate crowded conditions in the Louisiana State Penitentiary, or any prison or jail operated or maintained by any political subdivision of the State of Louisiana which is or may be affected directly or indirectly by an order of a United States district court limiting inmate population, to transfer such pending or future action to the United States District Court for the Middle District of Louisiana. The Chief Judge of that court is directed to cause all such actions pending in or transferred to his district to be assigned to a single judge for consideration and disposition. The judge to whom such actions are assigned may determine whether all or any part of such actions shall be consolidated for hearing or disposition and whether any portions of such actions not dealing with or affected by limitations on inmate population should be transferred back to the district from which it was transferred.

FOOTNOTES

1 "HN3 The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." 28 U.S.C. § 2106.

[9]**

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The Parish of Jefferson: Government Matters

Part III
Jefferson Parish Criminal Justice System

September 1994

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Special thanks are due to the following appointed officials and employees for their valuable responses to repeated requests for information: Dr. John V. Baiamonte, Jr., Executive Director of the Jefferson Parish Criminal Justice Coordinating Council; Richard M. Tompson, Director of the Twenty-fourth Judicial District Indigent Defender Board; Robert Pitre, Executive Assistant to the District Attorney; and Stephanie Rondenell, Director of Information Services for the Jefferson Parish Clerk of Court's Office.

We also thank Dr. Hugh A. Collins, Judicial Administrator of the State Supreme Court, and his staff, especially Paulette H. Holohan, for their assistance.

Essential information for this report was also provided by the following individuals:

James C. Boulware, Judicial Administrator, Jefferson Parish Juvenile Court

Judith Curry, Supervisor, Jefferson Parish Regional Office of Probation and Parole

Rodney De la Gardelle, Judicial Administrator, Second Parish Court of Jefferson

Dr. Eric Gorham, Chair, Juvenile Services Advisory Board

Chief Glen Jambon, Assistant Warden, Jefferson Parish Correctional Center

Luceia LeDoux, Director, Pretrial Diversion, Jefferson Parish District Attorney's Office

Sam Lewis, Director, Clinical Outpatient Programs, Jefferson Parish Human Services Authority

Dr. Walter Maestri, Director, Jefferson Parish Department of Juvenile Services

John Nobles, Clerk to Judge Calvin Hotard, Second Parish Court of Jefferson

Deputy Chief Gary Schwabe, Warden, Jefferson Parish Correctional Center

Beatrice Trancini, Judicial Administrator, First Parish Court of Jefferson

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Executive Summary

The Criminal Justice System in Jefferson Parish

The Jefferson Parish Criminal Justice System, like its counterparts across the nation, is less a "system" than an accumulation of parts, with sometime overlapping and sometime barely intersecting jurisdictions. For purposes of this BGR report, the parish criminal justice system was defined to include the following agencies:

Jefferson Parish Sheriff and Jefferson Parish Correctional Center

Jefferson Parish District Attorney

Twenty-fourth Judicial District Indigent Defender Board

Jefferson Parish Clerk of Court

Twenty-fourth Judicial District Court

First and Second Parish Court

Jefferson Parish Regional Office, Division of Probation and Parole,
Louisiana Department of Public Safety and Corrections

Jefferson Parish Juvenile Court

Jefferson Parish Department of Juvenile Services and Rivarde Detention Center

Jefferson Parish Criminal Justice Coordinating Council (CJCC)

These agencies, together with the municipal law enforcement agencies, employed approximately 2,500 people and spent approximately $94 million in 1993, as shown in Exhibits 1 and 2. These figures do not reflect the additional sales tax approved for the sheriff's office in 1993, estimated at $10 million per year, or the hiring of 82 new deputies anticipated for 1994. Nor do they include the parish Human Services Authority's intensive probation program, which began in May 1994, with a budget of $100,000 and a staff of four.

The Study

This BGR study is an overview of the system as a whole and the individual agencies which make up the system. Within this system perspective, BGR's scope of review was designed to focus on two separate but related questions: Is additional parish jail space needed, or is the apparent jail overcrowding a result of other parts of the criminal justice system's not working properly?

The rationale for the focus on jail overcrowding was based on the recognition that this is a major public policy matter resulting in the citizens of Jefferson Parish's being asked to decide, in recent years, on two proposals for financing and constructing jail space. In addition, it is quite possible that voters will be asked to consider another proposal to approve the financing of additional jail space in an election later this year or early 1995.

The Findings

The study finds:

- a jail at its legal capacity and beyond its functional design capacity
- the lack of a fully-functioning system to accumulate information about the operations of the criminal justice system that is both complete and accessible to all who need it (a problem shared with the rest of the state)
- a lack of clear and undivided responsibility for constructing or otherwise securing and funding the operation of the facilities needed by the various elements of the criminal justice system (such as space for detaining pretrial defendants, courtrooms, and space for housing sentenced offenders), due to the legal framework provided by state law
- a lack of authority or ability to coordinate policy-making, decision-making, and funding for "system" needs, due to the legal and financial structure provided by state law
- a system in which resources of personnel, technology, and facilities are unevenly distributed and in a number of cases inadequate to the task
- a district court system which (1) lacks a uniform management approach and performance standards that are consistent from division to division and (2) has made inadequate use of modern technology, both in its own management and in reporting to its overseers and the public
- no clearly-stated community policy on what classifications of suspects and sentenced offenders citizens want and are willing to pay to have held behind bars, and no mechanism for devising such a policy that would be binding on all the decision-makers and operators in the system

The Conclusions

Based on the study findings, BGR concludes that the Jefferson Parish criminal justice system is not working as a "system" or with optimum effectiveness. In answer to the orienting questions of the study, BGR concludes that additional jail space is needed but is far from all that is needed. On the basis of the limited analysis of jail data currently readily available to the public, BGR is unable to make a specific recommendation on the number of jail beds needed. Additional planning and analysis are required in order to make that determination.

BGR is convinced that additional jail space alone will not solve the problems of the Jefferson Parish criminal justice system. Experience across the nation as well as in Jefferson Parish indicates that if jails are built, they will be filled; and if other shortcomings of the criminal justice system are not addressed *directly*, those shortcomings will remain. What is needed in Jefferson Parish is system-wide improvement incorporating *all* of the recommendations outlined below.

The Recommendations

BGR makes the following recommendations:

- All the elements of the Jefferson Parish criminal justice system should actively cooperate with the Clerk of Court in continued development of an integrated information system that can be used and is used by all parts of the criminal justice system for planning, budgeting, management, and reporting purposes.

- Comprehensive, system-wide improvements should be aggressively pursued, including:

  - pursuit, by the judiciary, of judicial system management improvements, including development and refinement of a case tracking system, provision of caseload information to judges and other interested parties, development of baseline data and formulation and adoption of case processing time standards, and adoption of an effective continuance policy

  - formulation, under the auspices of the CJCC as planning and coordinating entity, of a community policy on the use of acceptable alternatives to traditional incarceration

  - careful consideration, by all parties in the system and under the auspices of the CJCC, of alternative methods for addressing jail overcrowding (including the options from the national perspective review that have not been implemented, as shown in Exhibit 3 of the body of the report)

- The Criminal Justice Coordinating Council, as the planning and coordinating entity for Jefferson Parish, should, on an ongoing basis, state clearly the existing responsibilities and authority for the funding and operations of all the elements of the criminal justice system, so that citizens, as well as officials, can understand who is responsible for what.

  Consolidation and clarification of authority in state law may be desirable but is not within the ability of Jefferson Parish alone to accomplish.

- The entity designated to be responsible for jail planning should clearly put forward its case for a specific recommendation of how much additional jail space is needed. Such a case would entail:

  - a detailed analysis of the jail population, such as that described by the National Institute of Corrections and the National Institute of Justice. Partial information on what sorts of inmates are being held and why is currently available. A descriptive analysis of the jail population (including numbers of persons according to length of confinement, status of case, seriousness of charge or crime, criminal history) is not currently available.

  - an analysis of case flow throughout the entire criminal justice system, for the purpose of identifying specific points at which delays and inefficiencies cause unnecessary increases in jail population. Such an analysis would reflect the seriousness and complexity of cases.

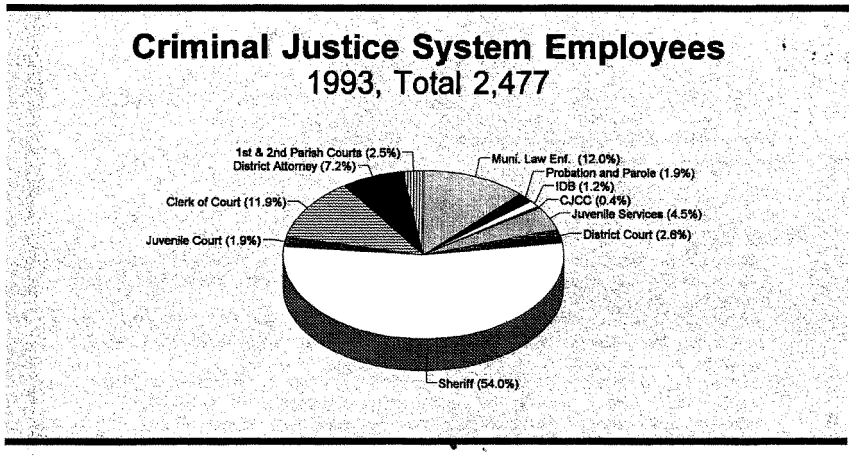

Exhibit 1

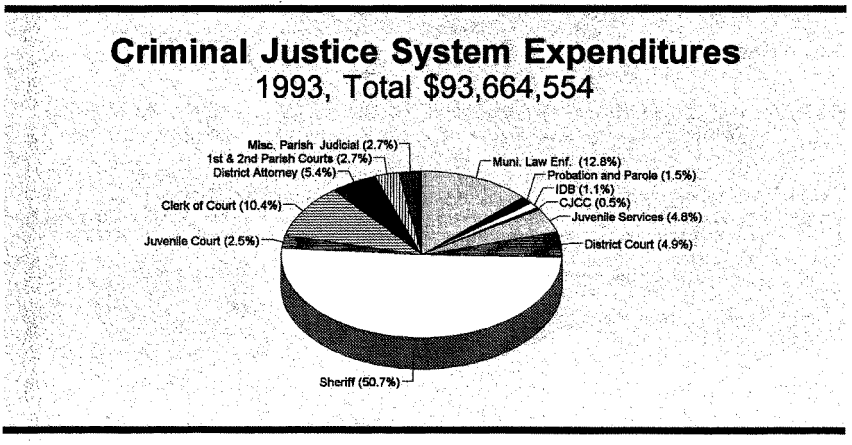

Exhibit 2

Introduction

This Bureau of Governmental Research report is the third in a three-part series on Jefferson Parish government undertaken at the request of, and with major funding by, the Jefferson Business Council.

The first report in the series, issued in July 1993, presented an overview of the general-purpose government of the Parish of Jefferson, the Parish Council and Parish President. The second report in the series, issued in December 1993, presented a financial and operational overview of the Jefferson Parish Sheriff's Office.

This third report focuses on the criminal justice system in Jefferson Parish. The criminal justice system was defined to include the following agencies:

- Jefferson Parish Sheriff and Jefferson Parish Correctional Center
- Jefferson Parish District Attorney
- Twenty-fourth Judicial District Indigent Defender Board
- Jefferson Parish Clerk of Court
- Twenty-fourth Judicial District Court
- First and Second Parish Court
- Jefferson Parish Regional Office, Division of Probation and Parole, Louisiana Department of Public Safety and Corrections
- Jefferson Parish Juvenile Court
- Jefferson Parish Department of Juvenile Services and Rivarde Detention Center
- Jefferson Parish Criminal Justice Coordinating Council (CJCC)

Despite the importance of the parish governing body as funder of portions of the criminal justice system and the importance of the parish president as ultimately responsibile for the administration of the Department of Juvenile Services, the Parish Council and President are not discussed separately in this report.

Additionally, although the expenditures of and personnel in the law enforcement agencies of the municipalities in the parish are included in the total of parish criminal justice expenditures and employees, these law enforcement agencies are likewise not disucssed separately in this report.

While BGR's study does include a brief overview of the system as a whole and the individual agencies which make up the system, the emphasis of this report is on the issue of the jail overcrowding in Jefferson Parish. More specifically, BGR's scope of review was designed to address two separate but related questions: Is additional parish jail space needed, or is the apparent jail overcrowding a result of other parts of the criminal justice system not working properly?

The rationale for the focus on jail overcrowding was based on several factors. First, this issue is a major public policy matter resulting in the citizens of Jefferson Parish's being asked to decide, in recent years, on two proposals for financing and constructing additional jail space. Secondly, it is quite possible that voters will be asked to consider another proposal to approve the financing of additional jail space in an election later this year or early 1995. Third, the issue of incarceration as a crime-reduction strategy is now being debated nationally, as well as locally, in numerous public forums.

By choosing this particular emphasis, BGR does not mean to suggest that this is the only important issue facing the criminal justice system in Jefferson Parish. As the overview of the system indicates, BGR found numerous examples of other issues that merit closer attention: the need for closer coordination among agencies in the system, the need to provide additional training for system personnel, the need to increase spending in areas such as indigent defense and juvenile preventive services, the lack of a comprehensive criminal justice information system, and the need for improved facilities and up-to-date equipment in court and correctional agencies. These other significant needs are all highlighted by consideration of the jail crowding.

Study Process

This report is based on (1) the review of financial and annual reports of the agencies included in the scope of review, (2) BGR staff interviews with key Jefferson Parish agency personnel in law enforcement, courts, corrections, and community services, and (3) a written survey instrument distributed to agency personnel. In addition, other local, state, and national agencies were contacted for professional and technical perspectives.

Presentation

The first part of this report focuses on defining the problem: Is the jail actually overcrowded, or is the criminal justice system overloaded somewhere else? The next section focuses on numbers of persons held in jail and on various programs and policies that have been implemented in Jefferson Parish to deal with the overcrowding problem. Particular attention is paid to alternatives to incarceration that have been successfully employed in other jurisdictions and that may have application in Jefferson Parish.

The next part of the report looks at options for securing additional jail space. The final section outlines BGR's conclusions and recommendations.

The criminal justice agency profiles are included as Appendix A to this report. Appendix B describes various non-jail measures for decreasing jail population. The final element of the report is a list of sources consulted.

A Note on the Special Legislative Session

A special anti-crime state legislative session held in June 1994 resulted in, among other actions, a number of signed acts that will impact jail and prison populations in Louisiana. Act 150 makes second-time offenders of certain crimes automatically ineligible for "good time," a system that rewards state convicts for good behavior in prison by releasing them early. Acts 15 and 39 allow 14- and 15-year-olds to be tried as adults for certain violent crimes. Act 23 allows prosecutors to use juvenile convictions to charge persons as repeat offenders when they become adult offenders. The governor also signed legislation allowing state police to set up a comprehensive criminal justice information system that will include an automated fingerprint identification system to be used by state police and parish sheriffs, to be paid for with $10.3 million from riverboat gambling revenues.

Jail Overcrowding in Jefferson Parish

The most visible problem facing the criminal justice system in Jefferson Parish—at least the one placed before voters twice in the past two years—is the adequacy of a jail at a judicially-established capacity of 700. According to the Jefferson Parish Criminal Justice Coordinating Council and various elected officials, jail capacity has driven the system for at least the last three years. Jail capacity had also driven the system more than ten years ago (Baiamonte, 1990). The pressure had been relieved for a short time by the opening of the Correctional Center Annex in 1989. The next year, however, the upper limits on jail capacity were being reached again.

There are at least two major perspectives on the problem. One view is that lack of jail space deprives law enforcement officials and judges of a needed mechanism for increasing public safety and social justice. According to this view, Jefferson Parish has inadequate space to detain or sentence persons accused and/or found guilty of violent or potentially violent crimes. Particularly in the view of lower court judges, Jefferson Parish has inadequate space to lend the force of a higher-order threat to a lower-order intervention or sanction. For example, a judge cannot threaten with incarceration the chronic passer of bad checks or the person found guilty of non-support if there is no space for holding such non-violent offenders.

The other major perspective is that the problem with the criminal justice system in Jefferson Parish goes beyond and may not even be a matter of availability of jail space. In one variation of this perspective, jail space is not needed: what is needed are other measures, either alternatives to incarceration and/or improved case management, that is, improved processing of persons and paperwork making their way through "the system."

Another variation of this perspective is that jail space is not all that is needed: what is needed is a

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comprehensive approach, including but not limited to additional jail space.

The Jefferson Parish Criminal Justice System, like its counterparts across the nation, is less a "system" than an accumulation of parts, with sometimes overlapping and sometimes barely intersecting jurisdictions. The parish system is comprised of approximtely 33 entities—some part of parish government, some part of state government, and some independently elected officers.

These include the Sheriff's Office and other law enforcement authorities; city, parish, and district courts; the Offices of the District Attorney and the Clerk of Court; the Indigent Defender Board; the Jefferson Parish Correctional Facility (the "parish jail"); the state Office of Probation and Parole; the parish Department of Juvenile Services, the Juvenile Court, and Rivarde Detention Center; and the parish Criminal Justice Coordinating Council. A brief description of these entities may be found in Appendix A.

Together, these agencies spent approximately $94 million in 1993, not including about $2.5 million in miscellaneous expenditures by the Parish Council to support various parts of the judicial system as required by state law. See Table A-1 in Appendix A.

In 1993, these agencies together employed approximately 2,500 people, of which more than half were involved in law enforcement. See Table A-2 in Appendix A.

There were 22 percent more reported crimes and 76 percent more criminal cases filed in the Twenty-fourth Judicial District Court in 1992 than in 1982. There were 23 percent more persons being held in the parish correctional center in 1991, the last year the jail was at less than 100 percent legal capacity, than in 1981. Does a prison filled to capacity mean more crime or less crime, more justice or less justice? Does a crowded court docket mean more or less crime, more or less justice?

This study will narrow the focus of those questions considerably by approaching two much smaller ones currently under discussion by voters, public officials, and public employees in Jefferson Parish: Is additional parish jail space needed, or is the apparent jail crowding a result of other parts of the system not working properly?

In order to answer those questions, one needs to be able to describe the jail population: Who is in jail, with what are they charged, what risk do they pose to themselves and others? One needs to be able to identify the parts of the criminal justice system as a whole and how their actions impact the population of the parish jail.

Who's Filling the Jail?

Who's In Jail?

Who Is Held?

In March 1994, 20 percent (137) of the 700 inmates in the parish jail were serving "parish time," that is, they had been convicted of a crime that does not necessarily carry a sentence at hard labor. Three and one-half percent (24) of the inmates were awaiting transfer to the custody of the Department of Public Safety and Corrections (DPS&C), and 76.5 percent (524) were pretrial detainees.

According to the Jefferson Parish Criminal Justice Coordinating Council, the portion of the jail population consisting of pretrial detainees has been at over 70 percent since 1990. It is unclear, however, how many of these "pretrial" detainees are awaiting what step in the pretrial process. "Pretrial" detainees could be:

- awaiting booking by law enforcement officers
- awaiting initial appearance before a magistrate
- awaiting the filing of a bill of information by the district attorney
- awaiting allotment by the clerk of court
- awaiting trial, which will require coordination by judge, district attorney, and defense attorney

In mid-April, 56 percent of the jail's inmates were rated "Code 6," the designation for arrestees who are repeat and/or violent felony offenders. The Code 6 designation is used to identify these dangerous multiple offenders as high priority for continued detention or for vertical prosecution by the district attorney. Statewide implementation of this program was among the policy

recommendations of the recent Governor's Task Force on Homicide and Violent Crime.

To be evaluated by the "Code 6" criteria, a person must have a minimum of five felony arrests and/or two felony convictions. Number and recency of crimes of violence and number of felony convictions are the most-heavily-weighted Code 6 criteria. Others are the number of different crime categories involved in the arrest, drug arrest, juvenile felony arrest, arrest for a crime involving a gun, and recent felony arrest.

All individuals held in the parish jail must, under a federal court order, appear before a judge or magistrate for a bail hearing within 72 hours of being arrested. Since 1991, the Twenty-fourth Judicial District Court has handled these hearings by having an appointed magistrate hold court at the jail every weekday morning. For persons charged with a crime carrying a possible sentence of hard labor, a district court judge must set bail; and district court judges rotate this responsibility on a weekly basis.

Persons charged with misdemeanors, traffic offenses, and code violations are unlikely to appear before the magistrate because they are not brought to jail in the first place. Such individuals are customarily given tickets or citations to appear in court instead of being jailed. From January through April 1994, the magistrate handled 1,822 arrestees at their initial court appearances. Of this total, nearly 70 percent were repeat offenders. About 18 percent (325) had violated the terms of their probation or parole, and nearly 50 percent (903) had a prior conviction.

Who Is Released?

No current, comprehensive analysis is available that indicates how many arrestees are released on bail or some form of non-monetary, either supervised or unsupervised, release, and with what types of crimes they have been charged.

BGR researchers were given access to the sheriff's "Bond Book," a log used by the sheriff's office to record who is let out of jail and the type of release of each individual. The "bond book" also contains various identification numbers and other, sometimes incomplete or improperly placed, information about an individual's current criminal charge. Without reference to individual case files, the bond book is not an adequate source of information from which to analyze the release decisions made by the sheriff and/or jail officials or to assess the potential threat of those releases to the community or to the individuals themselves.

A sample of releases over the last 12 months revealed that the majority (71 percent) of individuals released from the jail were released virtually on their own recognizance, that is, with no bail, no conditions, and no supervision. Thirty-four percent of the releases were of misdemeanants and traffic offenders, under a 1976 federal court order. Twenty-one percent were emergency releases of misdemeanor or felony offenders made at the discretion of the sheriff. Seventeen percent of the releases were released on a personal bond undertaking (PBU), in which arrestees are able to sign themselves out of jail. Fifteen percent of those in the BGR sample were released into third-party custody (personal bond surety undertaking, or PSBU) and 12 percent were released on a commercial, cash, or property bond.

In 1987, 50 percent of those released on bond had been released in effect on their own recognizance or on a "personal bond undertaking," and 20 percent were released to a third party. Twenty-seven percent were released on commercial or cash bond, and three percent were released on a property bond (Baiamonte, 1990, p. 43).

Emergency Release. Since April 1991, the sheriff has operated an emergency release program under which new arrestees or individuals already being held on a pretrial basis are released if they are regarded as less of a threat to the community than other new arrestees. About 45 inmates per week have been released under this program. Between April 1991 and August 1994, 8,754 individuals were released by the sheriff. About 6,800 were released immediately after booking, and almost 2,000 were released because of the need to accommodate more dangerous defendants. As of May 1994, personnel in the Detective Bureau of the Jefferson Parish Sheriff's Office administered the emergency release program. Prior to that time, this function had been performed by a jail population control officer at the correctional center.

"Good Time." In addition to those inmates released under the sheriff's emergency release program, others are released early by means of the sheriff's "good time" policy. This practice, optional under state law, is the granting by the sheriff of a reduction in sentence to inmates who earn such a reduction through work. Only those inmates with acceptable disciplinary records are eligible to earn "good time." The local "good time"

policy reduces an inmate's sentence by one day for every day served, effectively halving local sentences.

Early Release. Inmates serving parish time are also eligible for a 30-day early release from the jail. Good behavior is the primary criteria for eligibility. It is possible but unlikely that inmates who have not received good time credits will secure a release. Inmates are recommended for early release by the sheriff, but the district attorney and the sentencing judge must consent before an individual leaves the jail.

Who's Calling the Jail Full?

Federal Judge's Order

The capacity of the Jefferson Parish Correctional Center is established by order of a United States District Judge for the Middle District of Louisiana, specifically an Amended Consent Order in the case of *Holland v. Donelon*, the latest one signed in August, 1991. The capacity is set at a maximum of 700, with specific limits for the number of persons who can be held in specific "pods" on various floors.

Prior Increases in Space

The federal court first established jail population limits in May 1973. At that time, the sheriff and warden of the parish jail were ordered to reduce the inmate population to the jail's design capacity of 110. One month later the limit was raised to 132. In July 1975, parish officials submitted a "comprehensive jail overcrowding plan," including construction of a new facility. The new, 302-bed Correctional Center opened three years later.

Just three months after the new jail opened, however, the old jail was reopened with permission of the federal court; and the population limit was raised to 428. In 1983, the cap was raised to 602. Two years later, it was raised to 636, where it remained until 1989, when the Correctional Center Annex opened and the cap was raised to 666. The limit was raised again in 1990 and 1991, when it was set at 700, the present maximum. For only two years in the last 20 have the parish correctional facilities operated at less than 90 percent capacity, in 1985 and 1986.

Options to Jail and Jail Construction

The problem of jail overcrowding is clearly not limited to Jefferson Parish or to Louisiana. Recent national surveys have demonstrated that most states and hundreds of local jurisdictions have had to deal with increased demand for jail or prison space in the face of court-ordered capacity limits. Short of constructing new or additional jail space, what other options exist for dealing with the problem of jail overcrowding? To what extent have Jefferson Parish officials utilized these options in addressing the local problem?

In order to answer these questions, BGR developed a comprehensive inventory of approaches that have been used in other jurisdictions throughout the country to address jail overcrowding. Exhibit 3 summarizes the various options identified by BGR. These options were drawn from a search of the national literature and discussions with representatives of national criminal justice organizations. A narrative description of many of these options is included as Appendix B.

The options are intended to include a broad spectrum of system approaches ranging from speeding up the court process to providing additional community services in lieu of incarceration. Strategies include law enforcement, jail administration, court processing, probation and parole, alternatives to incarceration, and total system initiatives.

After developing this inventory of alternatives for addressing jail overcrowding, BGR interviewed key elected and appointed officials in Jefferson Parish to determine which of the alternatives had been implemented locally, to what degree, and whether an option was still in use. In some cases, BGR staff verified the information collected in the interviews with field observations.

Of the 54 options identified in the survey, Jefferson Parish has already implemented or currently utilizes almost 61 percent (33) of them. The major strategies that have been utilized in dealing with jail overcrowding in Jefferson Parish include: emergency release (#8 in the table); early release (10); diversion from prosecution (13); priority handling of jail cases (14, 18); prompt

Exhibit 3

Range of Options For Responding to Jail Overcrowding in Jefferson Parish

OPTION	Tried or currently in use in Jefferson Parish	
	YES	NO
Law Enforcement		
1. Summons in lieu of arrest	Y	
2. Prearrest diversion to a community resource		N
3. Timely and accurate completion of incident reports		N
Jail Administration		
4. Access to defendants for pretrial screening	Y	
5. Provision of analysis of jail population data to key decision-makers		N
6. Detention and case monitors and/or expediters	Y	
7. Citation release	Y	
8. Emergency release	Y	
9. "Good Time"	Y	
10. Early release	Y	
Prosecution		
11. Prearrest warrant screening	Y	
12. Early screening	Y	
13. Diversion from prosecution	Y	
14. Priority handling of jail cases	Y	
15. Vertical prosecution	Y	
Defense		
16. Prompt indigency screening	Y	
17. Early investigation and plea negotiation	Y	
18. Priority handling of jail cases	Y	

Judiciary		
19. Empowerment of judicial administrator		N
20. Separation of district court into civil and criminal divisions		N
21. Use of ad-hoc judges	Y	
22. Court rules to expedite case handling		N
23. Prompt signing of commitment papers of state-sentenced inmates	Y	
24. Use of time standards and goals		N
25. Adequate information system and effective monitoring of caseflow		N
26. Use of pretrial conferences	Y	
27. Trial date certainty and control of continuances		N
28. Regular plea-negotiation sessions		N
29. Use of "settlement day" conferences		N
30. Prompt bail-setting	Y	
31. Bail review	Y	
32. Use of non-financial release	Y	
Probation and Parole		
33. Expansion of "special conditions" of release	Y	
34. Reduced time for completion of PSI's for jail cases	Y	
35. Prompt action on revocation of probation	Y	
Alternatives to Incarceration (Pre- and Post-trial)		
36. Formal pretrial services agency		N
37. Supervised pretrial release		N
38. Treatment options	Y	
39. Fees, fines and restitution	Y	
40. Community service/non-monetary restitution		N
41. Home detention/electronic monitoring	Y	
42. Day reporting centers		N
43. Halfway houses	Y	
44. "Boot camp"/shock incarceration		N
45. Residential work-release facilities		N

46. Intensive probation	Y	
47. Sentencing review boards		N
Alternatives to Using Current Parish Jail Space		
48. Contracting for beds with other jurisdictions	Y	
49. Use of temporary housing options		N
50. Timely transfer of inmates sentenced to State Department of Public Safety and Corrections	Y	
Total System Initiatives		
51. Development of an integrated criminal justice information system		N*
52. Establishment of task forces/special committees	Y	
53. System-wide planning initiatives	Y	
54. Increased utilization of community services and alternatives to incarceration		N

* The Clerk of Court has developed and has on-line in his office, as of May 23, a criminal justice information sytem. It is expected be fully operational for that office by September. For that system to be truly integrated will require cooperation of all the independently elected officials and separate agencies and offices.

setting of bail (30); prompt action on probation revocation (35); the development of some additional alternatives to incarceration such as home detention and electronic monitoring (41); halfway houses (43); intensive probation (46); contracting for beds with other jurisdictions (48); and the timely transfer of inmates sentenced to state custody (50).

Taken together, the major initiatives implemented have helped to address potentially serious jail overcrowding in Jefferson Parish, although the extensive use of emergency release poses its own problems. Jefferson Parish officials should be recognized for their responsiveness in implementing many of these programs. There remain, however, a number of other options that have not been tried or are not currently used, which may have application locally.

Based on the inventory of alternative strategies, BGR determined that 21 of the 54 options have not been implemented in Jefferson Parish as of this time. BGR suggests that many of these options have potential for reducing the jail population and should be considered for possible application in Jefferson Parish. In particular, BGR recommends the following:

(1) measures to increase awareness of and to increase diversion to community resources in Jefferson Parish in lieu of arrest and detention

(2) alternatives to pretrial detention and local incarceration in Jefferson Parish. These include supervised pretrial release, work-release facilities, day-reporting centers, and greater use of halfway houses, home detention and intensive probation.

(3) earlier prosecutorial screening, which, in turn, is dependent on timely and accurate completion of incident reports

(4) improvements in court management, to include the use of time standards and goals, effective monitoring of caseflow, more public accountability on court workload and docket information, and more restrictions on the number and length of continuances

(5) a fully-operating, fully-integrated criminal justice information system to facilitate systemwide planning, budgeting, and accountability and to enhance communication between and among agencies

Improved Case Management

Improved case management is one of the fundamental strategies for addressing jail crowding. If pretrial detainees, for example, comprise a major portion of the jail population, and can be brought to trial more speedily, that segment of the jail population may decrease. On the other hand, if trials result in conviction and there are limited non-jail custody and/or supervision methods available, speedier trials could increase the jail population.

Even if improved case management alone does not relieve pressure on local jail facilities, it can be pursued for reasons of improved employee morale and performance and increased voter and taxpayer confidence in public officials and employees.

The following opportunities for improved case management have been found by BGR to exist in Jefferson Parish.

Law Enforcement

Incident reports forwarded to the district attorney are not always complete, and incomplete reports slow down the screening division's ability to make a decision on whether to charge an individual and with what crimes. The Office of the District Attorney follows up with law enforcement agencies with requests for additional information on priority cases. Training by that office might assist law enforcement officers in the preparation of complete reports.

Among efforts currently underway at the state level to improve criminal justice records for local and statewide use is the Louisiana Incident-Based Reporting System (LIBRS) being developed by the Louisiana Commission on Law Enforcement and the Louisiana Sheriff's Association. According to the *State of the State 1994*, this system is part of a larger effort to improve criminal justice records at the local level by (1) standardizing the information collected at point of incident and arrest and (2) creating standards for the electronic transfer of law enforcement data statewide.

Another state effort to improve law enforcement at both the local and the state level is the Criminal History Improvement Program (CHIP), a joint project of the Louisiana State Police and the Supreme Court of Louisiana. Under this program, a new criminal history computer and a new fingerprint computer are to be installed in the Louisiana State Police Bureau of Criminal Investigation and will form the foundation of a statewide integrated network with local law enforcement agencies. According to the *State of the State 1994*, Louisiana will be the first state to have such a network.

The District Attorney

The district attorney's office began using a computer system 15 years ago and appears to have in place much of the information, management, and training structure needed to reduce delays in case handling. The district attorney (DA) indicates that his office has been driven by jail cases for the past 10 years.

The DA's office receives information from the sheriff's office daily on who is held and who has been released from jail. The DA has established a goal, not yet achieved, of 90 days from arrest to trial. He indicates that excluding first degree murder cases, his office can take a case to trial in under 60 days.

Delays include, from the point of view of the DA: (1) receiving incomplete incident reports from law enforcement officers, so that the DA's screening division is delayed in deciding which cases to prosecute, (2) the time lapse between filing of the bill of information (charge) or indictment and allotment (assignment) of the case to a judge, and (3) defendants' not appearing for trial, due to the sheriff's not having enough space to hold them until the trial.

Indigent Defense

Physical access to defendants is reported to be a problem for the indigent defenders in Jefferson Parish, due to limited hours and the availability of only two visiting booths, down from four in prior years. The

difficulties of access to defendants are compounded when those defendants are held out of the parish.

Inadequate time for preparation due to heavy caseloads is also a problem for the indigent defender system statewide, as indicated in the 1992 Spangenberg study of the state system and the 1994 *Report of the Task Force on Indigent Defense*. ". . .[T]rials are delayed, cases retried, convictions improperly plea bargained, and, in some cases, prisoners released because of the lack of or the ineffectiveness of indigent defense counsel" (p.9).

The Task Force found that the current system as a whole is "significantly underfunded" and that the current funding structure should be revised because it is unfairly structured, volatile, and uneven across districts. Effects of inadequate indigent defense financing and management include inadequate representation of both capital murder and other defendants, delays in trials, improper plea bargaining and costly retrials.

In response to recommendations from the Task Force, the 1994 fiscal legislative session authorized $5 million to fund a temporary statewide indigent defender board. The State Supreme Court on July 1, 1994, promulgated an emergency rule establishing the temporary board. This board is to set guidelines and standards for the unified and effective operation of a comprehensive indigent defense system for the state. It is to present a plan to the legislature before March 1995 for the continuation of a statewide board and is to provide advice on sources and levels of funding.

Probation and Parole

While not as directly involved in the movement of cases through the system as the other entitites discussed, the Office of Probation and Parole (part of the state Department of Public Safety and Corrections) is notable for having established measurements of workloads that are different from a simple count of cases. The probation and parole agents in Jefferson Parish are above the workload required by Louisiana law and established by professional association standards. Statewide, agents are 40 percent above the workload required by state law.

The Courts

The number of criminal cases filed in district court in Jefferson Parish has fluctuated throughout the past ten years, as shown in Exhibit 4. The proportion of criminal to civil cases decreased in 1984 and 1985. Criminal cases as a proportion of total cases filed started to rise again in 1986 and have increased every year. While the number of criminal trials in 1993 was less than in 1983, the proportion of criminal trials was higher in 1993. See Exhibit 5.

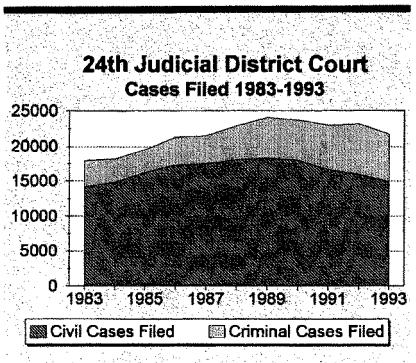

Exhibit 4

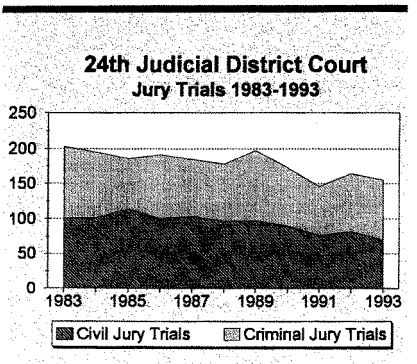

Exhibit 5

The average number of active criminal cases is about 170 cases for each division, according to the DA's executive assistant. As many as 400 additional cases in each division of court may be open because of outstanding attachments—that is, inability to locate the defendants. In 1993, according to the DA's office, over 5,700 felony attachments (orders to arrest for non-appearance in court) were issued.

While the number of cases handled is by itself far from an adequate measure of judicial workload or performance of either the court as a whole or of an individual judge, knowing the size, age and status of a pending caseload is essential to developing more adequate measures. This information will be more readily available under the clerk of court's new information management system.

In April 1991, the Jefferson Parish Criminal Justice Coordinating Council outlined the "fundamental elements" of a jail caseflow management plan, many of which have still not been implemented. These elements parallel national guidelines for improved caseflow management, and they need not be limited to jail cases.

These elements include:

- Judicial commitment and leadership
- Judicial consultation with all elements of the criminal justice system
- Court supervision of case progress, from allotment to sentencing
- Time standards and goals
- Adequate information system and effective monitoring thereof
- Trial date certainty
- Control of continuances

Rules Adopted by Judges

Although individuals and officials who deal with the judiciary of the Twenty-fourth Judicial District Court emphasize the independence of separately-elected judges, the separate divisions of the court exist, according to state law, "for the purpose of nomination and election of judges only." The judges *en banc* may enact rules of court to govern procedures and make the operations of the district court as a whole flow more smoothly and efficiently. They have not maximized their authority to do so in order to implement district-wide case management methods.

An example of specific steps that can be taken by the Chief Judge, with concurrence of the other judges, is a recent move that speeds up the judges' signing of papers "committing" sentenced prisoners to the State Department of Public Safety and Corrections. In February of 1994, the Chief Judge, at the sheriff's request, notified all other judges of the need to sign commitment papers as quickly as possible, in order to free up additional beds for unsentenced defendants.

The Clerk of Court set time standards for his employees, encouraging the minute clerks to have all commitment papers prepared within 72 hours following sentencing. The judiciary has complied with the Chief Judge's request.

Role of Judicial Administrator

The function of the Judicial Administrator of the Twenty-fourth Judicial District Court appears to be to provide administrative assistance and business management, rather than the proposal or administration of any court rules to enhance uniform case reporting, monitoring, and management. The Louisiana Court Administrators Association, a professional association affiliated with the National Association for Court Management, is working, however, to involve both court managers and judges in the improvement of court management in Louisiana.

Role of Clerk of Court

The Clerk of Court is in the process of implementing a computerized integrated criminal case tracking system so that any participating entity in the Jefferson Parish criminal justice system will be able to track a case from arrest to final disposition. Once this system is in place, it will be possible—as it is not now—to clearly identify points of delay in the processing of cases, identify patterns of delay and reasons for them, and implement solutions.

Role of State Supreme Court

Responsibility for administrative leadership of Louisiana courts rests with the Chief Justice and the Supreme Court of the State. The Judicial Council of the Supreme Court of Louisiana was established in 1950 to evaluate and monitor certain operations and procedures of the judicial system of the state. It "serves as a clearinghouse for ideas for simplifying and expediting judicial procedures and/or correcting shortcomings in the

system" (1993 Annual Report, p. 6). The Judicial Administrator of the Supreme Court serves as the administrative arm of both the Supreme Court and the Judical Council.

The committees of the Judicial Council are staffed by the Office of the Judicial Administrator of the Supreme Court. A current project of the Judicial Council is expected to "dramatically improve the management information available to the Judicial Council and the Supreme Court" (1993, p. 6). The Case Management Information System (CMIS) Project is on a "fast track" to development of (1) a statewide court-based felony disposition reporting system and (2) a master plan for an automated case management system for all trial courts in the state. The disposition reporting system is expected to be in place by the end of 1994, with the master plan for an integrated case management system to be developed by the end of 1995. The CMIS project is being funded by a one-dollar court cost on all felony, misdemeanor, traffic, and ordinance convictions.

Coordinators

CJCC

The Jefferson Parish Criminal Justice Coordinating Council (CJCC) was created by councilmanic ordinance in 1980 to coordinate crime control and criminal justice activities in the parish (JP Code Div. 19, sect. 2-771ff). The council is composed of 19 members and includes citizens, representatives from community and professional organizations, and the agency heads from the criminal justice agencies in the parish, as well as the parish president and the chairman of the parish council. An executive committee directs the CJCC. All members serve during their term of office and without compensation.

The CJCC is responsible for coordinating the activities of the public and private agencies involved in the parish's criminal justice system; mediating in interagency conflicts when requested; recommending policies and priorities for criminal justice activities; conducting research on crime control programs and monitoring and evaluating criminal justice programs; advising local units of government in seeking all types of revenue for the implementation of criminal justice programs; and overseeing the parish courts' case management system.

The office has a staff of nine and had a budget of $421,553 for 1993-1994. The office is supported both by the parish and by money it receives for administering various grant programs. The CJCC manages all federal and state criminal justice grants received by the parish, currently amounting to approximately $640,000. These cover juvenile justice, victim assistance, and anti-drug abuse programs.

For the last thirteen years, the CJCC has been involved in monitoring the jail population in the parish. The emergency release program currently administered by the sheriff was designed in cooperation with the CJCC staff. This program has assisted the sheriff's office in maintaining compliance with the federal court order that mandates population limits and staffing standards at the jail. The CJCC has also assisted the sheriff's office and the office of probation and parole in developing and implementing the home incarceration program.

LCLE

The Louisiana Commission on Law Enforcement and Administration of Criminal Justice (LCLE) was created by Executive Order in 1967 and by statute in 1976 to serve, among other functions, as the central planning and coordinating agency for adult and juvenile correctional systems. It consists of 51 members who represent various professional associations or are appointed by the governor or other elected officials. Terms are concurrent with the governor's; and members, except for legislators, serve without any compensation or reimbursement of expenses.

There are eight law enforcement planning districts in the state, each of which has an advisory council. Until 1980, Jefferson Parish was part of the nine-parish New Orleans metropolitan planning district. Now Jefferson Parish comprises its own planning district, according to the CJCC.

Under the law establishing the LCLE, parish governing bodies are authorized to create criminal justice information system policy boards responsible for the planning, establishment, and oversight of the criminal justice information system. No such policy board has been created in Jefferson Parish.

Options for More Jail Space

"Temporary" Jails

One option for incarcerating prisoners is the use of facilities such as "tent cities," which are in fact "temporary" jails. As supplemental housing facilities, "tent cities" and other modular types of inmate housing have been erected on or near existing jail sites as a way to accommodate low-risk inmates. These arrangements however, have proven to be problematic. In 1983, the Orleans Parish Criminal Sheriff constructed a small outdoor "compound" of tents and 400 beds with the intention of filling it with municipal prisoners. It quickly became filled, however, with pretrial detainees.

Although it was intended to be a temporary measure to help reduce overcrowding, the Orleans Parish Criminal Sheriff's "tent city" was a continuing fixture of the City of New Orleans' correctional system until the new jail opened in 1994. Orleans Parish Criminal Sheriff officials point out the management challenges and liability issues associated with a "tent city": (1) it is not easily staffed, (2) it is exposed to the elements, and (3) it is usually crowded. Therefore, such a facility contains elements of confinement which are easily challenged in court.

Construction

1981 Jail Plan

In 1981 the Jefferson Parish Council contracted with Guillot-Vogt Associates, Inc., to conduct a jail facility requirements study that addressed the long-term correctional needs of the parish. At that time, the Jefferson Parish adult correctional system had a total capacity of 428 beds, 302 accredited beds in the Jefferson Parish Correctional Center and 126 substandard beds in the old parish prison.

The 1981 study recommended a 624-bed addition to the existing 302-bed center, to be completed in 1986. The study estimated the need for an additional 105 beds, for a total of 1,131, by the end of 1989. These estimates were based on a straight-line projection of the prior seven years' inmate population. The 1981 study explicitly did not address the jail needs of the "distant future" of the 1990's and beyond. It did state that the provision of sufficient beds based on the history of previous years would be a "serious problem for the governing authorities of Jefferson Parish." It went on to suggest that a "long term, yearly updated, planning process be initiated now. . ." (p. 4).

No funds were made available to proceed with prison construction in the early 1980's. No construction was undertaken until 1987, when the parish received $2.5 million in state funds which permitted construction of a $2.9 million, 176-bed Correctional Center Annex.

The Annex was completed in 1989, and the substandard old parish prison was demolished. Throughout the 1980's, increases in jail space were made possible by double-bunking (a practice increasingly acceptable to federal authorities), converting a gymnasium into a 22-bed unit, and adding beds where possible. By 1989, when the Annex was completed, Jefferson Parish had 666 parish jail beds.

1991 Jail Plan

In 1991, the Jefferson Parish Council contracted with Guillot-Vogt and Associates, Inc., once again, to evaluate the feasibility of renovating existing buildings and/or constructing a new jail facility. The 1991 study used 1981 projections and concluded that at least a 500-bed facility was needed to accommodate the anticipated inmate population by the year 2000.

The 1991 study considered some eleven alternatives, from renovating existing warehouses to the construction of river barges designed for detention and incarceration. It concluded that construction of a new traditional multi-story institutional structure in the parking lot adjacent to the existing facility was the best choice. Criteria included cost, proximity to the existing complex, expandibility, and floor-plan configuration.

After this site was selected for recommendation, the proposed number of beds was increased to 700, including fully building out all five floors. The projected cost of construction in 1992 dollars was $14.8 million. To renovate the old kitchen, which serves 700 inmates from a facility designed for 300, would add another $600,000, for a total construction and architectural and engineering fees cost of $15.4 million.

In the fall of 1992, the Jefferson Parish Sheriff's Office proposed a 1/2 cent sales tax for construction and

operation of a new 700-bed facility at a cost of $18 million (though early cost projections were for $21 million). The tax did not pass. In the fall of 1993, the Jefferson Parish Council proposed a 1/4 cent sales tax for construction of the same type of facility, which also did not pass.

Non-Jail Construction Needs

In addition to the limitations on jail space, the current judicial district court facilities are also hampered by limitations of space and security. The building was not originally built as a courthouse and, as a result, has inadequate space and design features to handle the current volume of court activity. Perhaps the most serious security problem is that inmates must be led through the courthouse to arraignment and trial. There are no witness rooms in the courthouse. There is presently one more judge than there are courtrooms.

Despite any other needs, however, it is anticipated that bringing the building up to local fire standards and into compliance with the Americans with Disabilities Act will be addressed before additional space is added or physical security is provided for. According to the Chief Judge, these improvements in and modifications to the existing courthouse are anticipated to cost approximately $600,000.

Use of Sheriff's 1993 Sales Tax for Juveniles and District Court

As part of the Jefferson Parish Sheriff's successful proposal to increase the parish sales tax by 1/4 cent in the fall of 1993, the Sheriff pledged to spend $1 million on a juvenile intake and booking facility and $1.5 million on additions and/or renovations to courtrooms in the Twenty-fourth Judicial District. A letter of agreement between the Parish Council and the Sheriff was signed prior to the election. The parish is legally required by state law to provide for both of these facilities.

These funds are being collected by the sheriff and held in escrow until plans are finalized for these two projects. Design planning for the construction of the juvenile facility has already begun, and requests for proposals will be sent out by late 1994. Construction is expected to begin on the $1 million project in 1995, and completion is expected to take up to 14 months. The facility will be staffed by personnel from the Jefferson Parish Sheriff's Office. Juvenile intake and booking currently takes place at the parish's adult correctional facility in Gretna. State and federal law both require juveniles to be separated from adult inmates and defendants.

Specific plans for additional space for the Twenty-fourth Judicial District Court have not yet been developed. The fourth floor of the courthouse annex—currently occupied by the Fifth Circuit Court of Appeal—may become available within the next three to five years, as the parish has recently donated space for the construction of a new facility for that court.

Arrangements With Other Public Authorities

Other Parish Jails

In the 1970's, one of the first responses of the Jefferson Parish Sheriff and jail warden to local jail overcrowding was to transfer an average of between 35 and 40 inmates to eight neighboring jails. This transfer was made under the authority of L.R.S. 15:706. After the Jefferson Parish Community Correctional Center opened in 1978, this practice of "farming out" state prisoners to area jails was discontinued. It was resumed in 1989 and continued until 1993.

Orleans Parish Jail

Since 1993, the Jefferson Parish Sheriff has transferred to Orleans parish the inmates sentenced to the state Department of Public Safety and Corrections. This practice frees bed space in Jefferson Parish and accounts for the comparatively low percentage of "state" inmates in the Jefferson Parish jail. The Orleans Parish Criminal Sheriff is reimbursed by the state for holding these state prisoners, at the rate of $21 per day established by state law.

Since 1975, state law has provided for state payment of a per diem to local sheriffs to maintain those offenders who have been sentenced to the Department of Public Safety and Corrections but are housed in parish jails. The initial per diem was $2.25. Current law sets the payment at $21 per day, for which the legislature makes an annual appropriation based on projections from the state department.

As of April 1994, by letter of agreement between the Jefferson Parish Council and the Orleans Parish Criminal Sheriff (OPCS), the OPCS is currently holding 100 prisoners who are awaiting trial in the Twenty-fourth Judicial District Court. This agreement took about a year to finalize. Correspondence from the Council Chairman to the OPCS indicates that the agreement would terminate upon six months' written notice by either party.

Later correspondence from the Council Chairman to the Jefferson Parish Sheriff indicates that the agreement and budgetary provisions by the Council extend to the end of 1994. The Jefferson Parish Council pays $23 per day to the OPCS under this agreement and has budgeted $700,000 for 1994. The Jefferson Parish Sheriff's Office transports inmates between the Orleans Parish Prison and the Twenty-fourth District Court and is reimbursed $50,000 by the Parish Council for this purpose.

For a full year, the cost of "leasing" 100 beds from the OPCS would be $840,000 per year. Based on the current budget amount, transportation for a full year would be $60,000. For purposes of planning, this annual cost of providing for the detention of 100 inmates per day should be compared with the operating costs of new prison beds for 500 inmates, estimated at $7.5 million per year (Baiamonte letter, February 14, 1992, p.3). See Exhibit 6.

Absent any major changes in state or local detention and corrections policy, there are enough unused beds in the Orleans Parish facility to continue the current practice for several years. Of about 7,100 beds, about 5,500 were in use in June 1994, according to the OPCS Chief Administrative Officer.

Multiparish Prisons

An option authorized by law but not yet in use in Louisiana is a multiparish prison, created by the governing authorities of one or more parishes (L.R.S. 15:801ff). These facilities would be governed by a board of governors, composed of the sheriff and one parish government member from each of the

Operating Costs of Housing 500 Jefferson Parish Inmates

	In existing Jefferson Parish facility	In Orleans Parish Prison, under current agreement	In new Jefferson Parish facility
Cost per inmate per day	$34 (a)	$23	$41 (b)
Operating cost per inmate per year	$12,410	$8,395	$14,965 (b)
Operating cost per year for 500 inmates	$6.2 million	$4.2 million	$7.5 million (c)

(a) Baiamonte, April 11, 1994
(b) Baiamonte letter, February 14, 1992, and BGR calculations.
(c) Includes operating costs for renovated and expanded kitchen and food service areas; renovated and expanded medical facilities (including a psychiatric unit); a law library; staff exercise room; additional visiting areas for attorneys and clergy; and expanded administrative, storage, and laundry areas. (See CJCC and Guillot-Vogt *Study of Constitution Alternatives*, 1991, pp. 12-14)

Exhibit 6

participating parishes. The sheriff of the parish where the facility resides is the president of the board of governors and the administrator of the facility.

Multiparish prisons can be used for individuals sentenced to "parish time," that is, violators of municipal ordinances, those convicted of a misdemeanor, or those convicted of a felony punishable with or without hard labor. The governing authorities of the parishes within the multiparish prison area are required to appropriate annual operating funds in proportion to the assessed valuation of the property in the parishes.

Privatization

The privatization of corrections is an option that has gained in popularity in counties and states throughout the country, due primarily to steadily increasing inmate populations and the lack of public support for tax increases to support construction and operation of additional facilities. "Privatization" can mean privatization of ownership or privatization of management and/or operations, and Louisiana law provides for both in the case of corrections.

In 1989, the state legislature passed the Louisiana Corrections Private Management Act (L.R.S. 39:1800), which authorized state and local governments to enter into contracts for, among other things, the private construction and operation of correctional facilities. Two of the state's twelve prisons are currently privately operated. There are at present there are no privately-operated jails in Louisiana.

Private ownership and construction of the proposed new jail for Jefferson Parish, with lease-back and a buy-out provision to the parish, was considered in early 1992. At that time, the parish Finance Director indicated the parish could not afford such a lease, estimated at $2 million a year for 20 years (Baiamonte letter, p. 3). Since a quarter-cent sales tax would fund construction costs in two to three years (depending on whether the tax were levied parishwide or only in unincorporated areas), the long-term concern with additional jail space is operating costs. As indicated above, an additional 500 inmate beds and accompanying inprovements would be expected to add 7.5 million in operating costs for the sheriff and the parish council.

Conclusions and Recommendations

Findings

The major challenges confronting the criminal justice system in Jefferson Parish include the following:

- The parish jail is at its legal capacity and, by several measures, beyond its functional capacity. The population limit of the Jefferson Parish Correctional Facility has been raised six times since the facility opened in 1978 and has for three years operated at 100 percent of its legal capacity. According to the parish Criminal Justice Coordinating Council (CJCC), the sheriff's office releases approximately 200 arrested felons per month due to jail overcrowding.

- There is no system in place to accumulate information about the operations of the criminal justice system that is both complete and accessible to all who need it. The clerk of court has set up and is beginning to implement a system that is designed: (1) to be a repository for information from all parts of the system and (2) to be accessible to all parts of the system. Not all parts of the system have computerized their operations, however, much less linked them to the clerk's system.

  The prior clerk of court, whose office is the logical repository of information about elements of the system, had withdrawn completely from the parish computer system formerly used by the other justice system agencies. The sheriff has one computer system, the district attorney has another. The district court has hardly any information-processing and information-management capability. Some of the other agencies, particularly with the help of the CJCC, have developed their own capabilities.

  The present clerk of court is making a major effort and significant financial investment in developing a usable, comprehensive system. Efforts currently underway under the auspices of the Judicial Council of the State Supreme Court and LCLE (the Louisiana Commission on Law Enforcement and

Administration of Criminal Justice) may also aid in development of a system of information accessible to and usable by all interested parties.

- No one government official or entity has the clear and undivided responsibility for constructing (or otherwise securing) and funding the operations of the facilities needed by elements of the criminal justice system (such as facilities for detaining pretrial defendants, courtrooms, and space for housing sentenced offenders).

  This condition is the result of the state legal structure which gives various parish criminal justice officials responsibility for operating their facilities while it obligates the parish governing authority to provide those facilities. The state law authorizing the establishment of law enforcement districts with independent taxing power exacerbates the tensions and difficulties of the divided responsibilities.

- Compounding the absence of clear and undivided authority for various elements of the criminal justice system, there is no single entity with the authority or the ability to coordinate policy-making, decision-making, and funding for "system" needs.

- The resources across the system—resources of personnel, technology, and facilities—are unevenly distributed and in a number of cases inadequate to the task.

  Numbers of personnel are inadequate in probation and parole and indigent defense. Technology and preparedness for use of it are inadequate in the district court and indigent defense. Facilities are inadequate for safety and security in the courthouse and for detention and other activities (such as lawyer visitation) in the parish jail. Sanctioning options are limited at all levels.

- The district court system (1) lacks a unified management approach and performance standards that are consistent from division to division and (2) has made inadequate use of modern technology, both in its own management and in reporting to its overseers and the public.

  Although the separate divisions are established in state law for the purpose of election of judges only, the judges often function as separate and independent officials. No local mechanism exists for requiring district-wide standards and reporting to the public on performance.

- There is no clearly-stated community policy on what classifications of suspects and sentenced offenders citizens want and are willing to pay to have held behind bars, nor is there any mechanism for devising such a policy that would be binding on all the decision-makers and operators in the system. Because of the magnitude of increasing costs of incarceration, safe but lower-cost alternatives to traditional jails and prisons continue to be sought statewide and nationally and should be considered locally.

Voters have been asked twice in the last two years to approve a sales tax for jail construction, and they have voted down these requests—one from the sheriff and one from the parish council—both times. The very nature of these proposals reflects two of the major problems with the criminal justice system in Jefferson Parish.

The first is the unavailability of reliable information, openly arrived at, on which to base public policy recommendations and decisions. BGR's difficulty in securing the timely, voluntary release of data on the jail population from the responsible officials is a reflection of the unavailability of such information. The second problem is the divided authority and responsibility, in state law, for providing and operating parish detention facilities. The fact that the sheriff placed the first proposal on the ballot and the parish council, the second, is a reflection of continuing struggles over areas of responsibility and legal authority.

Need for Information

There are two fundamental sets of information needed to make decisions about the adequacy of jail facilities and, thus, the need for more or different ones. The first is a detailed analysis of the jail population, such as that described by the National Institute of Corrections and the National Institute of Justice (*Local System Assessment* and *Alleviating Jail Overcrowding*). The other is an analysis of case flow throughout the entire criminal justice system, for the purpose of identifying specific points at which delays and inefficiencies cause unnecessary increases in the jail population.

Neither of these fundamental sets of information, as a complete set, is currently available in Jefferson Parish.

No descriptive analysis of the jail population is available; and the information needed to develop the case flow analysis system-wide is just beginning to be recorded, collected, and maintained. Raw data is available, but detailed reports and analysis for review by elected officials and citizens are not. For example, we do not know with precision the characteristics of those persons either held or released. We do know that 75 percent of the jail population is awaiting trial or sentencing. We do know that about 56 percent of those in jail in the spring of 1994 were "Code 6" violators—multiple, violent offenders. We do not, however, have complete information on the rest of the pretrial detainees, about 20 percent of the total jail population.

Much data, nevertheless, support the need for additional jail space. The 1981 jail study, based on then-current jail use, estimated the need for over 1,100 beds by the end of 1989. Current usage coupled with the release of an average of 45 inmates per week since 1991, at least some of whom are repeat felons, indicate a facility operating beyond capacity. Many experts argue that a jail operating at 80 percent capacity should be regarded as "full," for sound operational purposes. By that measure, though technically under capacity, the Jefferson Parish Correctional Center has been over its operational capacity for the last 20 years.

BGR considered the possibility that improvements in court management and a concomitant decrease in the number of pretrial detainees would eliminate the need for additional jail beds. On the basis of a CJCC evaluation of the parish's special Drug Court, an experiment in improved court management, such improvement would result in the availability of no more than 150 beds. Moreover, it is possible that enhancing court operations would increase, not decrease, demand for jail beds.

Need for Coordination

In Jefferson Parish, perhaps precipitated by the problem of a jail at its legal capacity, many successful efforts at coordination are already taking place, especially where the various authorities interact directly with each other. Many of what are generally regarded as "reform" measures for releasing pressure on a jail or prison facility are already in use in Jefferson Parish. Some, such as extensive use of citations instead of arrest, were put in place prior to the most recent wave of "overcrowding." Others, such as emphasis on supervised pretrial release, have fallen into disuse as the persons for whom they were appropriate are no longer detained in the first place.

The Criminal Justice Coordinating Council, the position of Judicial Administrator of the District Court, and the district court judges *en banc* are all mechanisms that can be used more aggressively as instruments of coordination and improvement. Similarly, on the state level, the Judicial Council of the Supreme Court and the LCLE (Louisiana Commission on Law Enforcement and Administration of Justice) are tools that can be maximized for developing a coordinated and integrated system in which all the parts work together smoothly. The emphasis on smooth operation of the system is not a matter of speed, but of effectiveness and accountability.

The Conclusions

Based on the study findings, BGR concludes that the Jefferson Parish criminal justice system is not working as a "system" or with optimum effectiveness. In answer to the orienting questions of the study, BGR concludes that additional jail space is needed but is far from all that is needed.

BGR concludes that additional jail space is needed for the following reasons: (1) to provide space to sanction less serious offenders, whether as deterrence, constraint, or punishment; (2) to provide space for effective jail management; and (3) to provide space for holding persons charged with crimes and for whom there is a substantial risk that bail or other devices will not ensure their presence at trial. Based on the limited analysis of jail data currently readily available to the public, however, BGR is unable to make a specific recommendation on the number of jail beds needed. Additional planning and analysis are required in order to make that determination.

BGR is convinced that additional jail space alone will not solve the problems of the Jefferson Parish criminal justice system. Experience across the nation indicates that if jails are built, they will be filled; and if other shortcomings of the criminal justice system are not addressed *directly*, those shortcomings will remain. What is needed in Jefferson Parish is system-wide improvement incorporating *all* of the recommendations outlined below.

The Recommendations

BGR makes the following recommendations:

- All the elements of the Jefferson Parish criminal justice system should actively cooperate with the Clerk of Court in continued development of an integrated information system that can be used and is used by all parts of the criminal justice system for planning, budgeting, management, and reporting purposes.

- Comprehensive, system-wide improvements should be aggressively pursued, including:

    - pursuit, by the judiciary, of judicial system management improvements, including participation in the development and refinement of a case tracking system, provision of caseload information to judges and other interested parties, development of baseline data and formulation and adoption of case processing time standards, and adoption of an effective continuance policy

    - formulation, under the auspices of the CJCC as planning and coordinating entity, of a community policy on the use of acceptable alternatives to traditional incarceration

    - careful consideration, by all parties in the system and under the auspices of the CJCC, of alternative methods for addressing jail overcrowding (including the options from the national perspective review that have not been implemented, as shown in Exhibit 3)

- The Criminal Justice Coordinating Council, as the planning and coordinating entity for Jefferson Parish, should, on an ongoing basis, articulate the responsibilities and authority for the funding and operations of all the elements of the criminal justice system, so that citizens as well as officials, can understand who is responsible for what.

  Consolidation and clarification of authority in state law may be desirable but is not within the ability of Jefferson Parish alone to accomplish.

- The entity designated to be responsible for jail planning should clearly put forward its case for a specific recommendation of how much additional jail space is needed. Such a case would entail:

    - a detailed analysis of the jail population, such as that described by the National Institute of Corrections or the National Institute of Justice. Partial information on what sorts of inmates are being held and why is currently available. A descriptive analysis of the jail population (including numbers of persons according to length of confinement, status of case, seriousness of charge or crime, criminal history) is not currently available.

    - an analysis of case flow throughout the entire criminal justice system, for the purpose of identifying specific points at which delays and inefficiencies cause unnecessary increases in jail population. Such an analysis would reflect the seriousness and complexity of cases.

Appendix A: The Parts That Make Up the Whole

For total parish criminal justice system expenditures and number of employees for 1993, see Tables A-1 and A-2.

Law Enforcement

The Sheriff

Article V Section 27 of the State Constitution provides for the Office of Sheriff in Louisiana in all parishes except Orleans. According to the Constitution, the sheriff is the chief law enforcement officer of the parish, the executor of parish court orders and processes and the parish tax collector. The sheriff is also responsible for the operation of the correctional center. The sheriff is elected every four years at the time of gubernatorial elections.

As chief law enforcement officer of the parish, the sheriff has direct responsibility and complete authority in the unincorporated areas of the parish and concurrent jurisdiction with the law enforcement agencies in the incorporated areas. The sheriff and the parish council share overall responsibility for the parish jail. The parish is legally responsible for providing the sheriff with a facility, and the sheriff is responsible for managing the facility. Under the state law providing for special parish law enforcement districts, the sheriff is also given authority to levy sales and property taxes which can be used for jail construction, among other purposes.

The Jefferson Parish Sheriff's Office (JPSO), with nearly 1500 employees, is the second largest special-purpose government in Jefferson Parish. Only the Jefferson Parish Public School System employs more people.

The JPSO is funded from a variety of sources, but most (85 percent) of its funding is from commissions on taxes collected (45 percent), and revenue from ad-valorem taxes (22 percent) and sales taxes (8 percent). Expenditures on salaries (67 percent) and operating costs (8 percent) comprise most of the sheriffs office's expenditures. The JPSO annual budget was projected at $60 million for 1994, including the proceeds of a half-cent sales tax passed in October 1993.

Others

Twelve agencies in Jefferson Parish in addition to the sheriff's office have arrest authority and can refer cases to the district attorney's office. These are the police departments of the incorporated areas of Kenner, Gretna, Harahan, Westwego, Grand Isle and Jean Lafitte; the Greater New Orleans Expressway Commission (Causeway) Police; the State Police; the East Jefferson Levee District Police; the Louisiana Wildlife and Fisheries Department; the Mississippi River Bridge Authority; and the State Motor Vehicle Police.

Clerk of Court

The office of Clerk of Court is provided for by Article V Section 28 of the Louisiana Constitution. The clerk serves as clerk of the civil and criminal divisions of the Twenty-fourth Judicial District Court, clerk of the two parish courts, clerk of the parish juvenile court, recorder of mortgages, register of conveyances, custodian of notarial archives, custodian of evidence, chief elections officer, and the official in charge of jury management. Jefferson Parish's clerk of court performs the duties performed by eight elected and one appointed official in Orleans Parish.

The clerk of court is elected for a four-year term. The clerk hires his own employees and is responsible for his own budget and the receipt and disbursement of funds. State law requires the parish council to pay or provide for certain operating expenditures.

At the end of 1993, the clerk of court had 284 full-time and 14 part-time employees. The number of full-time employees has been reduced by over 20 percent (from 360) since the present clerk took office in 1988. According to the clerk, this reduction was made possible by increased automation and decentralization of management. Six supervisors handle divisions that correspond to the direct responsibilities of the clerk (various courts, recording of mortgages and conveyances). Three supervisors handle information systems, human resources and finance, and warehouse and records storage.

Total expenditures of the office of clerk of court for FY 1992 were just over $8 million. Revenues for that office are primarily self-generated by fees and charges. In FY 1992, fees and court costs generated revenues of almost $8 million. The parish council is obligated under state law to provide office space and support of utilities and other operating expenses. For 1992, the parish provided approximately $531,000 for various office expenses. For 1993, the parish was expected to provide about $711,000. Unused funds have sometimes been returned to the parish annually, and funds over a specified portion are required to be returned to the parish upon completion of the clerk of court's term of office.

Courts

Parish Courts

Jefferson Parish has two parish courts, First Parish Court on the parish's eastbank and Second Parish Court on the parish's westbank, both created in the 1960's (R.S. 13:2561.1ff and 2562.1ff). These courts have civil jurisdiction concurrent with that of the district court in cases involving $10,000 or less. They have criminal jurisdiction concurrent with that of the district court except for capital crimes or offenses punishable by imprisonment at hard labor. Since there is a separate juvenile court in Jefferson Parish, the parish courts there have no juvenile jurisdiction.

Each parish court currently has two divisions, that is, two elected judges who serve terms of six years. Their salaries are determined and paid by the governing authority of the parish and supplemented by the state. The sheriff or his deputy serves all writs and processes issued by the parish courts, and the district attorney prosecutes the criminal cases. The court reporters' salaries are determined and paid by the governing authority of the parish but may be supplemented from the Judicial Expense Fund for the Parish Courts, upon *en banc* decision of the judges. Traffic hearing officers were authorized for these courts in 1981; one is used only in First Parish Court.

The judges of parish courts may in all cases assess a court cost of not more than ten dollars, to be transmitted to the governing authority of the parish and used for an automatic case reporting system established in 1984. These judges must impose a service charge of seven dollars per filing, to be forwarded to the parish department of finance for purposes of acquisition, construction, equipment and maintenance of any judicial facility, and payment of bonded debt. The Parish Council has control over this fund and may by ordinance, with concurrence of the judges, reduce the amount of the service charge.

District Court

The Parish of Jefferson composes the Twenty-fourth Judicial District, which since 1991 has had sixteen judges, or divisions. District courts have original jurisdiction of all civil and criminal matters and have appellate jurisdiction as specifically provided. The legislature establishes the number of judges, or divisions, for each judicial district. The "separate and distinct divisions" are "for the purpose of nomination and election of judges only" (R.S. 13:582). Each district, except in Orleans Parish, organizes itself for the handling of both civil and criminal matters. In the Twenty-fourth Judicial District, 16 judges hear both types of cases. A separate Drug Court and a "Bad Check Court" are both presided over by additional judges appointed by the State Supreme Court.

Magistrate Court. All persons arrested in Jefferson Parish must have a bail hearing within 72 hours of their arrest. Since 1991, this initial appearance has been before a magistrate appointed by the Twenty-fourth Judicial District Court. The magistrate conducts hearings in a room at the jail every weekday morning. Persons arrested for a crime that does not

Jefferson Parish Expenditures 1993 Criminal Justice System

Office/Agency	Amount ($)
JPSO, including parish Correctional Center	47,696,894
District Attorney	5,069,915
Indigent Defender Board	1,033,069
Clerk of Court	9,733,052
24th Judicial District Court	4,550,158
1st and 2nd Parish Courts	2,556,671
Probation and Parole	1,380,047
Juvenile Court	2,241,197
Dept. of Juvenile Services, including Rivarde Detention Center	4,473,562
Criminal Justice Coordinating Council	421,553
Municipal Law Enforcement (est.)	12,000,000
Parish Miscellaneous Judicial	2,508,436
TOTAL	93,664,554

NOTE: 1993 amended budget figures for all agencies but the Indigent Defender Board (1993 adopted budget), District Attorney (1992 audited figures), JPSO, Clerk of Court and Twenty-fourth Judicial District Court (1993 audited figures). Municipal law enforcement figures from Criminal Justice Coordinating Council and BGR calculations.

Table A-1

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carry a sentence of hard labor can have terms of release set by the magistrate. For persons arrested for a crime that carries a sentence of hard labor, a district court judge must set bail.

Judges. District court judges are elected for terms of six years and receive salaries of $75,000 plus a Judicial Expense Fund supplement, which is variable but in the range of $8,400 annually, the amount set as of January, 1994. Each district court is required by the state constitution to elect from its members a chief judge to carry out the administrative functions prescribed by rule of court. The length of term of the chief judge is designated by each court; in Jefferson Parish, the term is one year.

Employees. The Twenty-fourth Judicial District Court has 65 employees. The employees include a Judicial Administrator with a staff of four, whose responsibilities are primarily business management.

The Prosecution

The District Attorney

The Office of District Attorney (DA), provided for by Article V Section 25 of the Louisiana State Constitution, is responsible for every prosecution in the judicial district, represents the state before the grand jury, and is the legal advisor to the grand jury (Art. 61, C.Cr.P.).

The DA's office is actively involved with the JPSO in targeting and aggressively prosecuting career criminals and habitual offenders in a special program known as "Code 6" begun two years ago. "Code 6" replaces a career criminal program developed several years earlier. The DA's office "vertically prosecutes" some of these career criminals, meaning that one assistant district attorney handles the case from start to finish. The goal of the program is to maximize charges and thereby maximize potential sentences for these repeat offenders.

The district attorney serves a six-year term and is authorized to select his/her own assistants (L.R.S. 16:1). State law provides for 36 assistant district attorneys in Jefferson Parish. The state pays the salaries of the district attorney and the 36 assistants. The district attorney is authorized to hire additional assistants, who are paid entirely by the parish (L.R.S. 16:53). There are currently 41 assistant district attorneys in Jefferson Parish.

There are 180 employees in the DA's office. One assistant is assigned to each division of district court. Seventy-five employees of the district attorney's office are assigned to juvenile court.

Approximately 61,500 cases are handled by the DA's office on a yearly basis. The great majority of these (45,000, or 74 percent) are traffic cases. The DA's office accepted approximately 60 percent (7,500 of 12,500) of the cases it screened in district court in 1993.

District attorneys throughout the state receive a portion of their financial support from fees and fines assessed by the judiciary, as well as commissions on amounts they collect in settlements on behalf of the state (L.R.S. 16:4,5). The office is also supported by the parish government. In 1992, the DA's office received approximately $2.8 million from the parish. The 1994 adopted budget has earmarked approximately $3.3 million for the DA's office.

The Defense

Indigent Defender Board

Like all judicial districts in the state, the Twenty-fourth Judicial District has an Indigent Defender Board (IDB) to coordinate the provision of defense counsel for those who qualify. In Jefferson Parish, the seven-member board is responsible for maintaining a staff of eligible attorneys to provide for the district's indigent defense (L.R.S. 15:145). The judges of each judicial district establish rules and regulations regarding the appointment of members to the IDB (L.R.S. 15:144).

In one of three ways a local board can provide for indigent defense, the Twenty-fourth Judicial District's IDB contracts with 25 attorneys who provide for the district's defense of the indigent (L.R.S. 15:145 B.(3)). These annual contracts pay each defense attorney $25,000.

The current average felony caseload for an IDB attorney is about 100 defendants, approximately half of whom are likely to be in jail. A representative of the IDB attends the daily (Monday-Friday) hearings in magistrate court and interviews all the persons on the magistrate's list to screen them for indigence. Defense counsel is not appointed, however, until the screening division of the district attorney's office has accepted charges. If an individual eligible for indigent defense says at the time of arraignment he or she will secure his or her own attorney but is still in jail with no attorney of record ten days later, the IDB sends that person a letter restating the availability of defense counsel.

The IDB administers the district indigent defender fund, which is the primary source of funding for IDB attorneys. This fund is made up of special court costs established by state law. These court costs may range from $17.50 to $25.00. In Jefferson Parish, the district has recently raised the cost to the maximum $25.00 in applicable cases. The indigent defender fund also consists of payments made by some individuals who receive IDB counsel but who are determined by the court to be financially able to provide partial payment or reimbursement.

The State Bail Bond Reform Act provides the IDB with a two percent commission on commercial bonds in criminal cases. According to the IDB Executive Director, this commission is expected to yield approximately $80,000 for the board in 1994. The parish is responsible for payment of attorneys other than IDB staff who are appointed by the district court to provide for indigent defense. The parish also pays for transcripts, expert witness fees, and investigation fees. In FY 1992-1993 these charges amounted to $140,000.

Detention

The Jail

The Jefferson Parish Correctional Center, located at 100 Dolhonde Street in Gretna, is the parish's primary detention facility. With a legal capacity of 700, it provides a bed for every 640 residents in the parish. The jail is provided and maintained by the parish and operated and staffed by the sheriff. The eastbank lockup, in Metairie holds 16 people on a short-term basis. Inmates are transferred from the eastbank lockup to the Jefferson Parish Correctional Center on a daily basis for magistrate court.

Probation and Parole

State Department of Public Safety and Corrections, Division of Probation and Parole

Adult probation and parole services at the local level are a state function under the Department of Public Safety and Corrections. Jefferson Parish is one of only two parishes that comprise its own district; Orleans Parish is the other.

The primary task of the Division of Probation and Parole is to provide supervision of individuals serving a sentence of probation or who have been released on parole from a state prison parole (Art. 893 C.Cr.P.). The division also provides presentenced and postsentenced investigations. Probation and parole officers are "peace officers" and as such are authorized to make arrests. There are 36 probation and parole officers in Jefferson Parish, with an average caseload of 120 cases each. In early 1994, the Jefferson Parish caseload was about 10 percent of the total state caseload (4,032 of 40,653). The fastest-growing part of the local caseload are the 60 "good timers" who return to Jefferson Parish (their home parish) after their release from state prisons. ("Good time" is a system of rewarding inmates for good behavior by reducing their sentences.)

At any time during the term of probation the court may issue a warrant for arrest or a summons to appear in court for violation of conditions of probation. The court has authority to grant bail to a probation violator or to revoke probation status. Parole violators, on the other hand, cannot be released from jail. According to Jefferson Parish magistrate court records, in the first four months of 1994, 18 percent of the defendants who came before the magistrate judge had violated the conditions of their probation or parole.

Probationers are charged a fee on a sliding scale of between $20 and $100 per month (or visit). Parolees pay a fee of $43 per month. Twelve percent of these funds is deposited into the state treasury. The balance makes up the Probation and Parole Management Fund. These funds are appropriated by the legislature to the state Department of Public Safety and Corrections' Division of Probation and Parole on an annual basis, according to workload.

Intensive Probation Program

An intensive probation program has been developed by the Jefferson Parish Human Serives Authority (JPHSA) in conjunction with the Twenty-fourth Judicial District Court and the state Division of Probation and Parole. It was developed in response to concerns about drug use among probationers, the lack of specialized and adequate care for this population, and the time delay between drug use and notification of the probation officer or the judge. The program began in May of 1994 with a budget of $100,000 and staff of four. It was modelled after the Miami Drug Court, which is cited in a recent American Bar Association book highlighting creative solutions to problems in the nation's justice system.

The intensive probation program is a sentencing option for any judge in the Twenty-fourth Judicial District, with priority availability to the Drug Court. A judge's decision to utilize this program is made in consultation with staff assigned to the program from the JPHSA (three full-time staff are assigned at this time), a state probation officer (who is responsible for all the individuals in the program in addition to his "regular" caseload), and the defense attorney.

The program is funded jointly by the Jefferson Parish Human Services Authority and the Jefferson Parish District Attorney's Office, with plans to seek additional grant funding.

Juvenile Justice System

Juvenile Court

Jefferson Parish is one of four parishes in Louisiana with special juvenile courts that have exclusive juvenile jurisdiction. In other parishes, this jurisdiction lies with the parish and district courts.

The jurisdiction of juvenile courts in Louisiana is "very expansive, more sweeping than the laws of almost every other state," according to the Coordinator for the Louisiana Children's Code Project, which was completed with adoption of the Children's Code in 1991. Courts with juvenile jurisdiction have jurisdiction over delinquency proceedings

except in specific cases when a child is treated as an adult under the law, child in need of care proceedings, families in need of services proceedings, traffic proceedings, voluntary and involuntary termination of parental rights proceedings, adoptions, and mental health proceedings. They have jurisdiction over adults in proceedings involving the care, custody, or control of a child, including child abuse or neglect, child custody, and child support.

Jefferson Parish Employees 1993 Criminal Justice System

Office/Agency	Number of Employees
JPSO, including parish Correctional Center	1,356
District Attorney	180
Indigent Defender Board	30
Clerk of Court	298
24th Judicial District Court	65
1st and 2nd Parish Courts	63
Probation and Parole	47
Juvenile Court	44
Dept. of Juvenile Services, including Rivarde Detention Center	111
Criminal Justice Coordinating Council	9
Municipal Law Enforcement (est.)	300
TOTAL	2,477

SOURCE: Jefferson Parish 1994 Operating Budget Proposed; Jefferson Parish Sheriff's Office, 1993 Organizatonal Tables; Criminal Justice Coordinating Council; and BGR interviews.

Table A-2

The Jefferson Parish Juvenile Court is composed of three judges. The Juvenile Court employs directly 41 people and has an annual budget of $1.9 million. In the Jefferson Parish Juvenile Court, the Judicial Administrator is directly involved in structuring the court calendar for productivity and in managing information for case handling as well as reporting purposes.

Department of Juvenile Services

The Department of Juvenile Services and the position of Director of Juvenile Services were created by parish council ordinance in 1987, to administer juvenile services for the parish (JP Code, Div.28, sect. 2-2510ff). The director is appointed by the parish president with the approval of the council.

The primary duties of the director include providing policy guidance to the parish president in the area of juvenile services; working with the parish president to formulate and evaluate operating policies, programs and procedures relating to juvenile services; and preparing reports on departmental operations.

The department has 112 employees, in five divisions: community services, volunteer services, probation, detention, and evaluation. The community services division is responsible for arranging agreements with local social service agencies. The head of that division estimates that approximately 80 percent of the juveniles who need treatment are able to receive it, but delays are a persistent problem.

The probation division currently handles over 1,200 juveniles, with each probation officer handling an average caseload of between 50 and 60 cases. The department also operates the 55-bed co-educational Rivarde Detention Center.

A Juvenile Services Advisory Board was created in 1989 to coordinate planning and policy development of juvenile programs. It is composed of seven persons nominated by local colleges, universities, and professional organizations and appointed by the parish council on recommendation of the parish president. The board meets on a monthly basis.

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Appendix B: Non-Jail Measures for Decreasing a Jail Population

Decisions that impact the population size at a local jail are made at a series of points in the criminal justice system. At these decision points, there are alternatives to holding an individual in jail, or even arresting a person in the first place. These alternatives range from diverting a person from the criminal justice system altogether, to sentencing a person to intense detention experiences away from jail.

Diversion Instead of Arrest

At the point of initial encounter with a law enforcement officer, an individual may be arrested or not. The decision to arrest a person lies with the law enforcement officer on or called to the scene. An individual may be diverted from the system, that is, simply released or referred or returned to a family or community resource.

Citation in Lieu of Arrest

An individual may be issued a citation (a "ticket") or a notice to appear in court (a "summons") instead of being arrested.

Diversion After Arrest

Diversion from detention can also occur after arrest. Early screening of arrestees, either by a pretrial services agency or by prosecutors, can help identify those individuals who can safely be released without conditions or released to participation in some special program.

The District Attorney's Office has since 1977 operated a voluntary diverson program for first-time, non-violent offenders. The District Attorney's Screening Division identifies eligible individuals. Program participants must be between the ages of 17 and 25, except persons arrested for shoplifting, who are eligible whatever their age. Even some felony arrestees are eligible, if they are between the ages of 17 and 25 and have no prior record.

Pretrial Services

Some of the same services that are called "pretrial" may actually occur "prearrest" or be used as an alternative sentence "posttrial." "Pretrial" services may be governmental or private. They may simply provide screening for identification of individuals with special needs. They may provide information on an arrestee or on community resources, enlarging the range of release or sentencing options that prosecutors or judges may consider. Pretrial services may also extend to the active supervision of various forms of conditional release.

Pretrial services programs are both a cost- and crime-control measure. They can reduce jail populations and, therefore, costs, by expanding the use of various forms of release. When such programs provide for supervision, they reduce the likelihood of additional criminal activity. There is no formally-established pretrial services agency in Jefferson Parish.

Bail

After arrest, an individual's initial appearance in court is customarily the most critical moment in determining detention or release at the pretrial stage. This is the stage at which bail is considered for all defendants.

The purpose of bail is to insure that the accused will appear for trial. Bail amounts are established according to both severity of the offense and the magistrate or judge's expectation that the accused will be present for trial. Misdemeanor bail limits follow a schedule, while judges have wide discretion in setting bail for felonies. In addition, bail may be non-monetary as well as monetary.

Monetary Bail. Judges can require actual cash or things of cash value to be paid or "posted" to secure release from the jail. Defendants can pay their bail amounts in full, or they can pay a commercial bonding company a deposit (usually 10 percent) and transfer the monetary responsibility of meeting bail to the bonding company. When commercial or bonding companies are used, these companies assume the responsibility of guaranteeing an individual's appearance in court and paying the court's full bail amount in the event of a defendant's non-appearance. Deposits paid to commercial bonding companies are non-refundable.

Occasionally, judges will accept partial payment of bail as sufficient for release from pretrial detention. Nominal or unsecured bail is the payment to the court of a small amount of money for which the defendant is liable if he/she does not appear in court. Deposit bail is the posting of a percentage of the full dollar bail amount. Cash bail paid by the defendant is returned if all court appearances are made.

Non-Monetary Bail. Non-monetary bail usually takes the form of community service.

Other Non-Monetary Pre-Trial Release. Other non-monetary forms of pre-trial release include: *Release on Recognizance* (ROR) or a *Personal Bond Undertaking* (PBU), where no financial deposit or conditions are required and an

individual is released from detention unsupervised; *Conditional* or *Supervised Release*, where no money is required to secure release from the jail, but certain conditions imposed by the court must be met, such as regular reporting to a special reporting center, agency or outpatient clinic, or continued employment or educational activity; *Third Party Release* or *Personal Surety Bond Undertaking* (PSBU), where a third party—usually a family member—guarantees an individual's appearance in court; and *Emergency Release*, an extraordinary form of release on recognizance used to reduce jail overcrowding whereby a sheriff, jail administrators, and/or judges decide to release certain detainees in order to accommodate new ones. Supervised release methods are the least available option in Jefferson Parish.

Extensive use of emergency release eventually renders meaningless the conditions of other forms of non-monetary release, and there are two types of emergency release now in use in Jefferson Parish. They are the sheriff's emergency release program, in operation since April 1991, and the release of misdemeanants under a 1976 federal court order.

Other Options for Release or Partial Release

Day Reporting Centers. Day reporting centers are facilities to which persons must report daily for structured services and/or activities. Failure to report may result in revocation of release and return to jail. In many cases, individuals released to day reporting centers are required both to report physically to the center and to call in by telephone on a regular basis. No programs of this type currently exist in Jefferson Parish.

Halfway Houses. Halfway houses provide lower security supervision in a residential setting. They are especially effective as transitional facilities where inmates can be supervised in later stages of their sentences. Release from jail to some halfway houses requires participation in drug or alcohol treatment programs, work/study programs, or employment counseling. There is currently one facility of this type in Jefferson Parish, used by the Intensive Probation Program.

Electronic Monitoring. Electronic monitoring uses electronic devices worn or carried on one's person to enforce home or home-and-work detention of pretrial suspects or sentenced offenders. Jefferson Parish currently has an electronic monitoring program funded by the parish and in use since March 1991. Criteria for program participation were developed by the Criminal Justice Coordinating Council, the Jefferson Parish Sheriff's Office, and the state Office of Probation and Parole. One hundred monitoring devices are available for the program. The parish's juvenile court is using 40 units, and 20 units are being used for adults awaiting trial or sentenced to parish time. The First Parish Court expects to begin using electronic monitoring by the end of 1994.

"Boot Camp"/Shock Incarceration. "Boot camp" or shock incarceration programs are designed to minimize the likelihood that participants will become habitual offenders. Modelled after the military boot camp, these programs rely on physical drills and discipline and have a rehabilitative emphasis. Early research reveals that for the first time offender without a long criminal history and with a willingness to participate, boot camp programs can have a positive impact.

Boot camp programs were originally used as an alternative to a prison sentence, but recent research indicates that programs are being developed as a sentence at the local level. Since 1983, 41 boot camps have been opened in 26 state correctional jurisdictions, in addition to many being developed and being considered in cities and counties and for juveniles (MacKenzie et al., p. 1). The Louisiana Department of Public Safety and Corrections has operated a boot camp program since 1987 at the Hunt Correctional Center in St. Gabriel. The recent anti-crime session of the state legislature also authorized planning for boot camps for juveniles in Louisiana.

Boot camps proposed for juveniles are not be be confused with the "Young Marines" platoons operating locally. The "Young Marines" program offered by the United States Marine Reserve, with corporate sponsorship, is not for offenders. It is offered for young people who are actively seeking positive experiences to help them cultivate discipline and self-esteem.

Other Non-Jail Sentences

Suspended Sentence. Courts occasionally will order a sentence and then suspend it, meaning the individual will not actually serve the sentence unless he or she engages in further criminal activity or violates the conditions of release. When judges suspend sentences, they have the prerogative to place the defendant on active or inactive probation.

Fines, Fees and Restitution. Offenders can be required to pay part of the cost of supervision, legal proceedings, or damage incurred as a result of their crimes. Fees for probation supervision, court fees, and restitution are most common.

Community Service. Community service or some public activity is sometimes required of offenders who are not employed or who cannot reasonably be expected to make monetary payments.

Probation. Offenders can be sentenced to probation instead of jail or prison. Probation usually requires meeting on at least a monthly basis with a probation officer and paying a monthly fee. Individuals on probation must meet the special conditions of their probation as ordered by the courts. These special conditions are sometimes determined after a presentence investigation (PSI) is completed by a probation officer.

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Sources Consulted

American Bar Association. *Just Solutions: A Program Guide to Innovative Justice System Improvements.* 1994.

Ashburn, Kevin. Regional Director, American Correctional Association, Department of Accreditation and Standards. Telephone Interview, February 9, 1994.

Baiamonte, John V. Jr., Ph.D., *An Evaluation of Division "S" (Drug Court) of the Twenty-Fourth District Court,* Jefferson Parish, LA. 1993.

———. "*Holland v. Donelon* Revisited: Jail Litigation in Jefferson Parish, Louisiana, 1971-1991." *The Prison Journal,* Fall-Winter, 1990.

———. Letter to Jefferson Parish Council Chairman Robert B. Evans, Jr. February 14, 1992.

———. Letter to Jefferson Parish Council Chairman Robert B. Evans, Jr. February 7, 1993.

———. Letter to Jefferson Parish District Attorney John Mamoulides. August 10, 1992.

———. Letter to Jefferson Parish Sheriff Harry Lee. September 11, 1992.

Bottoms, Rod V. Corrections Specialist, National Institute of Corrections. Telephone Interview, February 9 and June 22, 1994.

Brown, Richard. Director of Program Development, Orleans Parish Criminal District Court. Telephone Interview, May 24, 1994.

Burke, Emmet, et al. *Jail Population Management: Diagnosing and Predicting Occupancy Levels.* March 1973.

Center for Urban Analysis. *Jail Overcrowding and Decisionmaking.* Office of the County Executive, Santa Clara, CA. May 1987.

Cooper, Keith W., "Pretrial Bond Supervision: An Empirical Analysis with Policy Implications." *Federal Probation,* September 1992.

de la Houssaye, Richard. Director of Business Development, Corrections Corporation of America. Telephone Interview, January 5 and June 6, 1994.

Geaither, Richard. Corrections Specialist, National Institute of Corrections. Telephone Interview, June 22, 1994.

Geerken, Michael R. Chief Administrative Officer, Orleans Parish Criminal Sheriff's Office. Telephone Interview, June 3, 1994.

———. *Jail Population Growth in New Orleans: A Projection for the 1980's, A Planning Document.* Orleans Parish Criminal Sheriff's Office. November 1983.

Goerdt, John A., and Martin, John A. "The Impact of Drug Courts on Case Processing in Urban Trial Courts." *State Court Journal* (1989), 4-12.

Governor's Task Force on Indigent Defense. *Report of the Task Force on Indigent Defense*. May 1994.

Governor's Violent Crime and Homicide Task Force. *Report of Recommendations*. May 26, 1994.

Henry, D. Alan. "Pretrial Programs: Describing the Ideal." *Federal Probation*, 57(1993): 23-27.

Jefferson Parish, *1994 Operating Budget, Proposed*.

Jefferson Parish Criminal Justice Coordinating Council. *Crime Tax Proposal*. October 16, 1993.

———. *Jefferson Parish Jail Overcrowding*. April, 1991.

———. *Number of Offenses Known to Police, 1970-1993, in Louisiana, Orleans Parish and Jefferson Parish*. January 28, 1994.

———. *Number of Offenses per 100,000 Residents, 1970-1993*. January 31, 1994.

———. *Number of Prisoners Released from the Jefferson Parish Correctional Center on an Emergency Basis by the Sheriff, April 3, 1991 to February 6, 1994*. [no date].

Jefferson Parish Criminal Justice Coordinating Council and Guillot-Vogt Associates Inc. *Prison Facility Requirements: Jefferson Parish, LA*. September, 1981.

———. *Study of the Construction Alternatives to Relieve Jail Overcrowding at the Jefferson Parish Correctional Center*. November, 1991.

Jefferson Parish Clerk of Court. *Jefferson Parish Clerk of Court 1988 - Present*. 1993.

Jefferson Parish Clerk of Court. *Statement of Revenues, Expenditures and Changes in Fund Balance For the Year Ended June 30, 1993*.

Jefferson Parish Department of Juvenile Services. *1993 Annual Report*.

Jefferson Parish District Attorney's Office. *General Purpose Financial Statements*. December 31, 1993.

Jefferson Parish Sheriff's Office. *Daily Jail Sheet*. April 18, 1994.

———. *General Purpose Financial Statements, 1992-1993*.

———. *Parish Prison Population Daily Head Count Monthly Report*. March 1994.

Judicial Council of the Supreme Court of Louisiana. *Annual Report*. 1980-1993.

Kennedy, Edwin. "How Does Your Court Perform?" *State Court Journal*, 11 (1987).

Kerle, Ken. Managing Editor, *American Jails Magazine*. Telephone Interview, July 13, 1994.

Koehler, Richard and Linder, Charles. "Alternative Incarceration: An Inevitable Response to Institutional Overcrowding." *Federal Probation*, (September) 1992, 12-18.

Landrieu, Moon. *Report of the Chairman of the Commission to Study the Orleans Parish Judicial System*. February, 1993.

Louisiana Office of Planning and Budgeting. *State of Louisiana, State of the State, 1994.* Baton Rouge, LA. 1994.

Louisiana Supreme Court. Rule XXXI, Pt. I. July 1, 1994.

Maggio, Ross. *Inspection of the Jefferson Parish Community Correctional Center.* May 17, 1991.

Mahoney, Barry, "Attacking Problems of Delay in Urban Trial Courts: A Progress Report." *State Court Journal,* 11 (Summer 1987).

Mahoney, Barry and Sipes, Larry. "Zeroing in on Court Delay: The Powerful Tools of Time Standards and Management Information." *Court Management Journal.* 1985.

National District Attorneys Association. *National Prosecution Standards.* 2d. ed. Alexandria, VA. 1991.

Neubauer, David W. *America's Courts and the Criminal Justice System.* 3d. ed. Pacific Grove, CA: Brooks/Cole Publishing Co., 1985.

Neubauer, David W. Professor of Political Science, University of New Orleans. Interview January 12, 1994.

Reaves, Brian. Statistician, Bureau of Justice Statistics. Telephone Interview, February 8 and June 2, 1994.

Schwartz, Howard. "Monitoring Delay Reduction Efforts." *Court Management Journal.* 1985.

Select Council on Revenues and Expenditures in Louisiana's Future. Issue Papers. "Management of Prison Population Growth", "Privatization of Prison Management." SECURE. Baton Rouge, LA, 1994.

Smith, Walt. Deputy Director, Pretrial Services Resource Center. Telephone Interview, June 2, 1994.

Spangenburg Group. *Study of the Indigent Defender System in Louisiana: A Final Report.* March, 1992.

Spoon, Jeff. Vice-President for Project Development, Wackenhut Corporation of America. Telephone Interview, June 7, 1994.

State Court Journal. *Special Report: Trends in the State Courts.* Winter 1991.

State of Louisiana. Office of Planning and Budgeting. *State of Louisiana, State of the State, 1994.* Baton Rouge, LA. 1994.

Stephan, Jim. Statistician, Bureau of Justice Statistics. Telephone Interview, February 9, 1994.

Twenty-fourth Judicial District Court Judicial Expense Fund. *Financial Statements and Auditors' Reports.* December 31, 1993.

U.S. Advisory Committee on Intergovernmental Relations. *The Role of General Government Elected Officials in Criminal Justice.* Washington D.C.: GPO, 1993.

U.S. Department of Justice. *FBI Uniform Crime Reports: Crime in the U.S.* Washington D.C.: GPO, 1980-1992.

U. S. Department of Justice. Bureau of Justice Statistics. *Pretrial Release of Felony Defendants, 1990,* by Brian A. Reaves. Washington D.C.: GPO, 1993.

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U.S. Department of Justice. Law Enforcement Assistance Association. *Criminal Justice Planning for Local Governments*. Washington D.C.: GPO, 1980.

U.S. Department of Justice. National Institute of Corrections. *The Intermediate Sanctions Handbook: Experiences and Tools for Policymakers*. Longmont, CO [no date].

U.S. Department of Justice. National Institute of Corrections, Jails Division. *Jail Capacity Forecast Workbook*. Longmont, CO [no date].

———. *The Local System Assessment: Facility Development Information and Application*. Longpoint, CO [no date].

U.S. Department of Justice. National Institute of Justice. *Alleviating Jail Overcrowding: A Systems Perspective*, by Andy Hall. Washington D.C.: GPO, 1985.

U.S. Department of Justice. National Institute of Justice. *An Evaluation of Shock Incarceration in LA*, by Doris Layton McKenzie, et al. Washington D.C.: GPO, June 1993.

———. *Felony Defendants in Large Urban Counties, 1990*, by Pheny Z. Smith. Washington D.C.: GPO, 1993.

———. *Intermediate Sanctions*, by Voncile B. Gowdy. Wasington D.C.: GPO [no date].

———. *The Implications of Effective Case Processing for Crowded Jails: A Manual for Judges*, by Jolanta Perlstein and D. Alan Henry. Washington D.C.: GPO, 1986.

———. *The Implications of Effective Case Processing for Crowded Jails: A Manual for Prosecutors*, by Jolanta Perlstein and D. Alan Henry. Washington D.C.: GPO, 1986.

———. *Issues in Contracting for the Private Operation of Prisons and Jails*, by Judith Hackett et al. Washington D.C.: GPO, 1987.

———. *The Privatization of Corrections*, by Joan Mullen et. al. Washington D.C.: GPO, 1985.

U.S. Department of Justice. Office of Justice Programs. *Pretrial Services Programs: Program Brief*. Washington D.C.: GPO, 1990.

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The Washington Times

DAVENPORT: Hard questions for Holder

By

Friday, March 19, 2010

It's been a rough few months for Attorney General Eric H Holder Jr , and he should face more tough questioning when he reports for the Senate Judiciary Committee oversight hearing on Tuesday.

In the legal war on terror alone, he has been under fire for scheduling the trial of Khalid Shaikh Mohammed in civil court in New York rather than in a military tribunal, for Mirandizing the Christmas Day bomber suspect, for trying to relocate Guantanamo detainees where people don't want them; for dragging his feet before finally revealing at least nine lawyers in his department who formerly represented terrorist detainees; and, most recently, for reporting that he failed to disclose in his confirmation hearings seven briefs in which he participated as a lawyer, including ones involving the war on terror

Even with health care and the economy as the front-burner issues in Mr Obama's first year, no Cabinet officer's department has generated more smoke than Mr Holder's. Senators - even the president himself - should be examining these several problems and asking whether Mr Holder is really up to the job or, perhaps worse, whether these issues add up to an agenda to tip the legal scale sharply in favor of detainee rights and away from national security concerns.

Let's start with the latest flaps because, taken together, they seem to raise questions of legal philosophy at the Department of Justice In November, Sen. Charles E. Grassley, Iowa Republican, asked Mr Holder to identify department lawyers who may have conflicts of interest for having represented detainees. In a surprisingly cool response, Mr. Holder said he'd consider it and then sat on it for three months. Finally, last month, he provided an incomplete answer, admitting there were at least nine department lawyers who had represented detainees, identifying just two of them

Then the department acknowledged this week that Mr. Holder had failed to disclose some of his own work on several briefs, including one on behalf of enemy combatant Jose Padilla, during his confirmation hearings as attorney general, calling it an oversight A case that went all the way to the Supreme Court would seem to be difficult to forget or overlook

It does seem to be a fair concern why Mr Holder, who works for a president promising the most transparent administration in history, would stonewall the Senate and even now fail to provide a complete response on who in his department represented detainees and their current responsibilities Those who questioned his response, however, prompted quite a sideshow as several prominent lawyers came forward to defend the obligation of an attorney to represent unpopular causes. This neatly sidesteps the real question, which is not whether these lawyers acted properly before they came to Justice, but rather, why Mr. Holder chose to hire so many of them and what they are doing now. Believe me, had the Securities and Exchange Commission hired a suite of Fortune 100 general counsels to enforce securities laws or the Environmental Protection Agency a table full of lawyers from oil companies, such questions would be asked.

Other hard questions Mr Holder should have to answer include why he feels a lawyer with no prosecutorial experience - who as a human rights advocate referred to military commissions as "kangaroo courts" and said freeing terrorists is a legal "assumption of risk" we must be prepared to take - is qualified to represent the department on detainee matters Or, for that matter, what Mr. Holder's hiring of these nine lawyers or his signing of Padilla's brief might tell us about his own view of detainee rights After all, because some of those briefs were not produced for his confirmation, that was a conversation the senators did not have with him when it counted

There are two schools of thought about the legal war on terror. One essentially starts from the premise that terrorist suspects, enemy combatants and detainees should not be tried as "criminals" and are not entitled to the full panoply of constitutional rights afforded to U.S citizens Instead, they should be tried in military tribunals, with more limited rights. A very different view, held by many human rights advocates, is that terrorist suspects should be treated as one of our own citizens, even at the risk of returning enemy combatants to the field to attack again

The U.S. Senate, and the American people, have every right to know who is setting policy for the legal war on terror and in which of these directions they are headed Mr Holder would do well to bring less foot-dragging and more forthright answers to these legitimate questions when he comes before the Judiciary Committee next week.

David Davenport is a research fellow at the Hoover Institution.

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GSA head says he forgot to mention loan United Press International July 16, 1982, Friday, PM cycle

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July 16, 1982, Friday, PM cycle

SECTION: Washington News

LENGTH: 404 words

HEADLINE: GSA head says he forgot to mention loan

BYLINE: By GREGORY GORDON

DATELINE: WASHINGTON

BODY:
The head of the General Services Administration says he inadvertently overlooked a $425,000 federal loan in stating his finances to a Senate committee before he was confirmed.

GSA Administrator Gerald Carmen told Chairman William Roth of the Senate Governmental Affairs Committee Thursday that he based his responses to a committee financial questionnaire last year on standards required in other forms he filed at the time.

Carmen failed to disclose that his used tire business in Manchester, N.H., received two Small Business Administration loans totalling $425,000 in 1975. Forms that executive branch officials must file under the Ethics in Government Act do not require disclosure of business loans, even if they are personally guaranteed, unless the loans are delinquent.

But the Senate committee's disclosure form is more specific, demanding information on all direct and indirect loans to the party seeking appointment to a federal office. Carmen, who met with Roth and committee staff, said in a letter to the Delaware Republican that his "failure to provide this information to the committee was an oversight. I regret any embarrassment that was caused by that."

A spokesman for Roth, who sent Carmen a letter last month demanding an explanation, said the committee would review the GSA chief's letter, "but Sen. Roth seems to be satisfied that he provided the material that was left out of the original disclosure and that it was an oversight.

"It appears to satisfy the requirements the committee had," the spokesman said.

It was revealed last month that shortly after taking office as head of the government landlord and procurement agency, Carmen requested and received two six-month deferrals on the low-interest SBA loans, which were combined in 1976. As collateral for the loan, Carmen posted the property on which he ran his tire business and other property he owned personally.

Carmen, a key figure in running President Reagan's New Hampshire campaign, sold the business in 1979, but did not repay the loan.

He continued to hold the money at 6.5 percent interest, while conventional lending rates soared. SBA officials say he still owes $405,000, plus $30,000 in interest accrued during the deferral period.

Carmen's letter said he owed $391,593 on the loan, which he and his wife, Anita, guaranteed. Carmen is due to resume his monthly payments of $2,717 on the loan on July 24.

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Banking On Andy CuomoHUD Secretary and rising Democratic star Andrew Cuomo wants to go places-- assuming he can leave some baggage behind. The American Spectator January,1999

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January,1999

SECTION: FEATURE

LENGTH: 5468 words

HEADLINE: Banking On Andy Cuomo
HUD Secretary and rising Democratic star Andrew Cuomo wants to go places-- assuming he can leave some baggage behind.

BYLINE: Sam Dealey & James Ring Adams.;
Sam Dealey is TAS's assistant managing editor. James Ring Adams is an investigative writer for TAS.

BODY:

It couldn't have been more straightforward. The Senate Banking, Housing, and Urban Affairs Committee had a form. The form was entitled " Statement for Completion by Presidential Nominees." The nominee was President Clinton's choice for housing secretary, 41-year-old Andrew Cuomo, who was to complete the questionnaire and return it before his confirmation hearing in January 1997. Simple, no?

Evidently not. One question read: "Give the full details of any civil or criminal proceeding in which you were a defendant, or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of an inquiry or investigation." One of the cases he listed, Smith v. Cuomo, et al., had been brought against him and others by the owner of a south-Florida savings and loan, alleging an illegal takeover attempt. But Cuomo failed to disclose a later suit, brought by the S&L itself, and settled only two months before his hearing.Why? Perhaps because Oceanmark v. Cuomo, et al. revealed that in 1988, federal banking regulators investigated Cuomo and fellow investors for possible change-in-control violations. The nominee should have listed that investigation, too, in answer to the second part of the question. He did not.

How serious is this? Reagan White House aide Edwin Meese was investigated by an independent counsel for incomplete personal financial disclosures. Several Reagan administration officials were prosecuted in the Iran-contra matter for withholding information from Congress. Interior Secretary Bruce Babbitt has his own special prosecutor, probing the question of false statements to Congress. And then there's Cuomo's predecessor at HUD, Henry Cisneros, who resigned in the face of an independent counsel investigation. The allegation?Making false statements to the FBIabout pay-offs to a blackmailing mistress during a routine background check.

The Justice Department apparently has not investigated Cuomo's responses. But it has looked at him for another reason. The issue:Did Cuomo retaliate against Oceanmark by pressuring the federal agency charged with thrift oversight to close the S&L? After a preliminary investigation, Attorney General Janet Reno concluded that the standard for appointing an independent counsel had not been met. Yet Reno's inquiry was narrowly tailored. Abroader review of Cuomo's involvements with Oceanmark reveals serious questions of bank-regulation skirting.

Some of Cuomo's fellow investors in Oceanmark are also prominent figures in an array of political and financial scandals. And the secretary clearly grows anxious when asked about his past business associates and their affairs. HUD lawyers even threatened a lawsuit when TAS submitted detailed questions.

Most notable among Cuomo's past associates is Michael Blutrich, head of the law firm which Cuomo joined as a $150,000-a-year partner in 1985. Blutrich recently pled guilty to looting an insurance company in Florida of some $237 million, some of which went into a business controlled by the Gambino crime family. Andrew Cuomo would like to play down his close relationship with Blutrich and dismiss it as a thing of the distant past, but financial disclosure documents show a relationship lasting practically to the day of Cuomo's Senate confirmation hearing as HUD secretary in 1997.

The Son Also Rises

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PORT Exhibit 1117

As the eldest son of Democratic lion Mario Cuomo, Andrew had one of the best educations in hands-on politics. He got into the game at 16, helping in his father's first state-wide race. He took part in Mario's losing bid for mayor of the Big Apple in 1977, and in his successful run for lieutenant governor a year later. But Andrew's real start came in 1982 when, at 24, he ran his father's winning gubernatorial campaign. In a primary against the formidable New York City Mayor Ed Koch, Andrew led the campaign from 37 points down to a victory margin of four. In the general run-off against the vastly better financed Republican Lew Lehrman, Andrew again prevailed. The uphill victories testified to Andrew's burgeoning campaign and management skills.

During his father's years in the governor's mansion, young Cuomo refined his political touch. He campaigned hard for Walter Mondale's presidential bid, bringing in savvy media consultants. And he was largely responsible for staging one of his father's most memorable moments, the carefully crafted speech at the 1984 Democratic National Convention.

Young Cuomo also got an education in hard-nosed politics. In 1983, the New York State Investigation Commission (SIC) concluded that Cuomo and two other aides--including current NBC News star Tim Russert--bullied members of the allied Liberal Party to support a Cuomo-favored candidate to head the party. According to the SIC report, the three men "intervened in the internal affairs of the Liberal Party in order to obtain a resolution of the factional dispute." Party members testified that the governor's aides threatened them with the loss of lucrative state jobs and patronage if the party's fight was not resolved in a way "acceptable" to the governor.

After this brush with notoriety, Andrew left Albany in 1984 for Manhattan to join the staff of New York District Attorney Robert Morgenthau. In 1985 he became a partner in the Park Avenue law firm of Blutrich Falcone & Miller, a haven for his dad's financial boosters. One partner, Lucille Falcone, was Mario's chief fundraiser and, according to reports, Andrew's girlfriend. In his memoirs the governor even wrote he would likely join the firm when he left public service. (It ceased to exist before he could do so.)

Also in 1985, Andrew took a leaf from the playbook of his future brother-in- law Joseph Kennedy, who had started his career by founding a non-profit corporation to provide low-cost heating fuel to the poor. Andrew's variant was a non-profit called Housing Enterprise for the Less Privileged (HELP), which provides transitional homes and services to the homeless. In 1988 he quit his law practice to work full-time as president of HELP, a post he manned until joining HUD as assistant secretary for community planning and development in 1993.

Cuomo's zeal for philanthropy turned not-so-neighborly, however, when community legislators questioned the location and size of HELP projects, and when they attempted to slow what they saw as the non-deliberative, willy- nilly speed with which those project proposals were approved. One of these communities was Westchester County, a largely affluent New York suburb whose liberal denizens were shocked at the prospect of a housing project in their backyards.

Paul Feiner, then a county legislator who was skeptical toward HELP, says Cuomo interrupted a telephone conversation one night in 1988 with an emergency breakthrough by an operator. Cuomo's call was a tongue-lashing for Feiner's position on HELP. "There was a tremendous amount of pressure," recalls Feiner. At the time he told a reporter that Cuomo had threatened him, saying, "I'll ruin your career. I'll break every bone in your body," unless Feiner supported the project. Cuomo dismissed these allegations. "It's sad that (Feiner's) mind would work in such a way," he said. "I think it's even ethnically disparaging."

Now the Democratic supervisor of a Westchester town who holds a seat on HELP's advisory board, Feiner hardly seems out to get Cuomo. In fact, he calls HELP a "total success" and says that "perhaps without the pressure it would have been impossible to get the complex built... But I would have preferred a little more compromising with the community. It was a bad taste of government where things were being rammed through."

The Oceanmark Bog

Notwithstanding such unpleasantness in the non-profit sector, it's one of Andrew's for-profit ventures that has now come back to haunt him. As a corporate lawyer in the Blutrich firm, he represented a group that in 1986 decided to invest in a family-owned, federally chartered savings and loan in North Miami Beach called Oceanmark. Andrew himself was also one of the investors. The original owners of the thrift, the Fenster family, had lived in Florida for generations, and they soon concluded that they were losing control of the bank to outsiders who wanted to plunder its assets and discard the shell.

Their suspicions were aroused by the accidental discovery that what they called Cuomo's "New York Group," supposedly five major investors, consisted of at least 22, who among them controlled more than half of Oceanmark's stock. Concealed takeover groups are a major no-no in financial regulation, and Cuomo's group had filed none of the required change-in-control papers. So the Fensters' lawyers hit them with the first of what has become a series of lawsuits.

A constant theme in this convoluted legal history is the political well- being of Andrew Cuomo. The New York Group offered to settle this first suit in 1990, just an hour before the Fensters' legal team was set to take a deposition from Andrew. (Several months before, Cuomo had backed out of another scheduled deposition, submitting an affidavit that he was sick with nausea, diarrhea, and headaches. The next day the New York Post had run a picture of Cuomo, wearing black tie at a party the previous night, over the caption, "He's one sick puppy.")

As part of the deal, Lynn Fenster and her family signed off on a press release apologizing to Andrew for "statements

made in the heat of the moment." "I regret any personal hardship this purely business dispute may have caused Mr. Andrew Cuomo," read the release. "I have always considered him an outstanding professional and count him as a friend."

The 1990 deal looked like a total victory for the Fensters. The New York investors agreed to put their stock in trust for five years and then give Oceanmark first dibs on buying it back.

What the Fensters didn't know, however, was that the Federal Home Loan Bank Board (FHLBB) had separately investigated the New York Group and entered into a secret supervisory agreement on June 17, 1988. The agreement noted that " the FHLBB believes there is an issue as to whether there has been a violation of" control laws, but "is willing to forebear from the initiation of proceedings." The terms were that Cuomo and the other group members had to dispose of their Oceanmark stock within a year. If any remained in their hands, stated the agreement, the stock "shall be donated to Oceanmark." By acceding to the agreement's stern language, Cuomo and his fellow investors avoided any fault-based action by the FHLBB.1

1 Cuomo and the other signatories may have misled regulators in order to close the deal. According to the agreement, these stockholders, "consistent with their desire to no longer be involved with Oceanmark, have already entered into an agreement for the sale of their stock." But that's exactly what the group did not do.

Despite its clear interest in knowing about the agreement, Oceanmark only learned about it by chance in early 1991. For the next three years, the thrift tried without success to get a copy from the Office of Thrift Supervision (OTS), the new federal regulator set up after the savings-and- loan debacle. Finally, in 1994, the Fensters took Cuomo and his group to state court in Florida, charging them with "an illegal conspiracy to commit fraud" by failing to abide by the supervisory agreement.

The suit dragged on until 1996, when suddenly an armistice was reached. Oceanmark received a copy of the federal order, and the New York Group agreed to exchange their stock for a largely worthless class of non-voting shares. The bank withdrew its suit. But what astounded Lynn Fenster was the speed with which the settlement was approved. "It went through like a rocket," she says.

The Fensters were especially impressed when Cuomo assured them he could clear up a residual problem with the OTS office in Atlanta, which supervises Florida thrifts. "One of the things that Andrew said," recalls Ms. Fenster, " was, 'Don't worry about a thing. I know people in Atlanta and I can take care of this.'"

An Independent Counsel All His Own

Why did the settlement come so quickly? To the Fensters it seemed that members of the New York Group, even those no longer active in the case, had suddenly decided to smooth the path for Andrew's career. Indeed, just three weeks later Cuomo was nominated to replace Henry Cisneros as HUDsecretary. But the Fensters were less inclined to throw rose petals on his progress. The result was a nasty face-off that led to the Justice inquiry.

As part of the 1996 settlement, Cuomo asked for another public apology. This time the Fensters refused. Explains their lawyer William Friedlander, " If Oceanmark said publicly that their claim had no merit, then everything we had negotiated for--which was the right to bring it again, to dismiss it without prejudice--would have gone out the flue."

According to the Fensters, Cuomo took "no" very badly, threatened reprisal, and retaliated by pushing the OTS into an extended examination aimed at closing Oceanmark down. "Within a month after we refused to do what Andrew demanded," says Friedlander, "the OTS was back on this bank like white on rice. And they ate us for lunch."

When Oceanmark began receiving what its auditors saw as unusual demands concerning recapitalization requirements from OTS regulators, the Fensters appealed to the agency's ombudsman. In a letter of March 4, 1997, Oceanmark noted that the acting head of the OTS at the time, Nicholas Retsinas, was simultaneously HUD's assistant secretary for housing and the federal housing commissioner, and hence subordinate to Secretary Cuomo. The thrift alleged that Cuomo had used his authority to punish the Fensters and force a sale of Oceanmark, which, says Friedlander, would have incidentally produced a payoff on the non-voting stock held by the New York Group.

The ombudsman considered the charge against Cuomo a political hot potato and passed it on to the Treasury Department's inspector general. The FBI launched its own investigation. In late July 1998, even as FBI agents were still conducting interviews, the ombudsman revisited the complaint and concluded that OTS personnel might have been "plain-spoken," but they "did not act in a retaliatory manner." He found "no information" showing Cuomo's influence.

In early September 1998, the Fensters filed yet another suit, charging Cuomo, Retsinas, and current OTS Deputy Director Richard Riccobono with a " conspiracy" to ruin Oceanmark. Cuomo, they said, had used his political power to pressure the others into harassing Oceanmark. But the real news was buried deep inside the lawsuit. The Fensters said they had been interviewed by the FBI, and that the bureau appeared to be conducting its own investigation of Cuomo and his associates.

In fact, Justice did conduct a preliminary investigation of Cuomo--the kind of inquiry that can lead to the appointment of an independent counsel. Reno confirmed this on September 8, 1998, when she announced her determination that "there were no reasonable grounds to believe that further investigation (by a court-appointed special prosecutor) was

warranted." Then she went a step further, announcing that Justice lawyers would defend Cuomo, Retsinas, and Riccobono in the latest Oceanmark suit.

Cuomo's spokesmen now cite Reno's statement in rebutting the Oceanmark charges. In a letter to TAS, "HUD staff" wrote:

The real question...is will you allow your publication to be used as a mouthpiece for the bogus and self-serving allegations made by Oceanmark Bank. You are now on notice that the allegations...are false. You are also on notice that these allegations are ten years old, previously published, and now proven baseless by the Department of Justice, FBI, and Republican Senate. The publication of these statements which you now know to be false and slanderous is actionable. Your publication has a history of printing false material regarding Mr. Cuomo. The Secretary intends to pursue all legal avenues regarding this matter. 2

2 The current allegations are, of course, not ten years old, but arise from the Fensters' 1996 refusal to sign a statement similar to their 1988 apology to Cuomo. Cuomo's problems with the thrift were "previously published" in the October 1994 TAS, in connection with Oceanmark's efforts to obtain the secret supervisory agreement. The "false material" in question, HUD staff has specified, was an item on Secretary Cuomo's press conferences. (See On the Prowl, TAS, December 1997, and Correspondence, TAS, January 1998.)

A similar letter to TAS from Cuomo's private lawyers states, "We intend to protect his interests and will not tolerate any purported reporting, based on smear tactics, to enhance anyone's private business agenda or to increase circulation."

OTS recently withdrew its examiners from Oceanmark, and the Fensters' latest suit alleging an elaborate "Cuomo Conspiracy" seems strained at best. But there do appear to have been violations of the supervisory agreement, which federal regulators have failed to pursue--specifically the divestiture of the investors' stock. The case also puts a spotlight on some people who Cuomo perhaps wishes would remain in the dark.

The New York Group

Heading up the New York Group was Sheldon Goldstein. Originally from Brooklyn, Goldstein moved to nearby Rockland County in the mid-fifties, where he set up shop as a real-estate developer and businessman. By the 1980's he was a millionaire several times over and had a long list of corporations to his name.

Goldstein could also be a generous political benefactor. According to an analysis by Newsday, Goldstein, his family, and associates donated over $102, 000 to Mario Cuomo's gubernatorial campaigns from 1982 to 1989. In the 1982 campaign alone, the Goldstein machine contributed more than $49,000. Shortly after Cuomo was first elected, Goldstein was appointed chairman of the State University Construction Fund, a lucrative patronage title.

In addition to Oceanmark, Goldstein, Cuomo, and others in the New York Group shared extensive interests in two other financial institutions, Hudson United and the Savings Bank of Rockland County. Oceanmark's Lynn Fenster recalls how the New York Group operated: "Shelley Goldstein would put out a call for money, and you would go. And if you didn't go--you almost didn't have a choice. You didn't have a say. The first time you didn't bring your money--he told me this--you didn't get to go again. And the first time you ever got worried about your money or didn't want to stay there, he would literally write you a check and you would never get called again." This seems to be borne out in an April 16, 1987 memo Oceanmark obtained from Cuomo's files. "It is imperative that you and I sit down together and discuss the whole Venture deal and on Monday I will put out the call for $500,000," Goldstein wrote to Cuomo. "What Ed Wachtel (a New York Group investor) and I decided to do is call for all monies, put it in the Savings Bank of Rockland County and draw the money as we need it but to have it in the bank." Jeffrey Fenster, Lynn's brother and partner, paints a similar portrait: "Shelley would gin up an investment and he would put out a call for money. And Shelley had a thing that no one would ever lose money. He always gave them their money back if they lost money."

Goldstein was also a chief client of Cuomo--and Blutrich and Falcone--at their law firm. Other aspects of the cozy Goldstein-Cuomo relationship frequently cropped up in New York papers during the mid-1980's, including:

y In 1984 Arco Management won a state contract to manage the Bridge and Jackie Robinson housing projects in New York City. It later turned out that the Division of Housing and Community Renewal, the state agency that awarded the contract, had done so under a non-competitive bid. The following day the agency director claimed that the unorthodox move was in response to an emergency. The director also told the New York Times that Arco was " recommended to me but by whom I don't remember." Arco was owned by Goldstein and managed by one of his two sons, both of whom belonged to the New York Group. John O'Connell, another New York Group investor, was also a member of Arco. Andrew was his dad's right-hand man in Albany at the time, and Goldstein, as chairman of the State University Construction Fund, was a state official.3

3 Arco is currently a "prime contractor" for HUD property management in Minnesota, D.C., Puerto Rico, the Virgin Islands, and every state east of the Mississippi River. Upon becoming HUD secretary, Cuomo recused himself from decisions directly involving Arco.

y In 1987 Goldstein and Cuomo were wrapped up in a criminal and civil case and a State Investigation Committee (SIC) inquiry into a campaign quid pro quo. The allegations were that after Goldstein was denied part-ownership in a Manhattan building rented to the state, he influenced the governor's office to cancel part of the lease. Afew years earlier, while a special assistant to his father, Andrew had amended the lease. According to the Times, Goldstein told the SIC, "I threatened to ruin (the building owner) in the state of New York as a window contractor." Soon after, Goldstein resigned as chairman of the State University Construction Fund for "personal reasons," according to a state spokesman, but presumably under pressure to do so after his embarrassing admissions. Cuomo testified to the committee that he had acted in the state's best interests at the time, not Goldstein's.

y In 1988, plans for a proposed thruway exit near Sterling Forest, the largest timberland tract in the New York City area, were scotched for economic and environmental reasons. The project had been pushed by Governor Cuomo. A report by the state comptroller noted that, "over the years, this project has been repeatedly rejected by past state governors and the New York State Thruway Authority as unwarranted based on the area's traffic needs and as simply a boon for private land developers." Goldstein, according to the New York Times, had extensive property interests in the area and, in 1986, attempted to purchase the 30-square-mile forest. Andrew Cuomo was his attorney in the deal.

When questioned about his ties to Goldstein, Cuomo has distanced himself. " I am one of 10, 15, 20 lawyers who represent him," he told the New York Times in December 1987. But the April memo from earlier that year suggests a closer relationship. "I really don't know what you did on your taxes," Goldstein wrote Andrew. "I called and found out you filed for an extension. Please, please let's put it together or some day it will come back and bite us."

The Witness Formerly Known as Blutrich

Another New York investor in Oceanmark was Michael Blutrich, a name partner in Cuomo's firm. In 1996 Blutrich was exposed as a target in one of the largest-ever FBI fraud probes, and in November 1998 was convicted on 22 counts of racketeering, fraud, and money-laundering. In that scam, Blutrich and others plotted with the then-chairman of the Orlando, Florida-based National Heritage Life Insurance Company to loot some $237 million from the company through inside loans and sham real-estate deals.

In 1990 the Blutrich group approached Heritage and offered to invest $4 million. There was just one problem: They only had a million. So the investors illegally "borrowed" the rest from an escrow account at Blutrich's firm. Soon after, a $3-million advance for "future commissions" was drawn from the insurance company by the Blutrich group and deposited into the firm's escrow account. The investors bought land near the Catskills in New York, then billed Heritage for millions more than they had paid.

Another sham loan involved a Bronx land parcel owned by 4305 Associates, a two-person corporation formed in 1988 and named for the parcel's street address. Blutrich was vice-president and 50-percent shareholder; Lucille Falcone, president and equal shareholder. Blutrich persuaded a cohort to pose as a real-estate appraiser, who valued the property at $2,346,000. It was actually worth only $700,000. Heritage made a $1.5 million loan, a large chunk of which found its way into Blutrich's pockets.

Predictably, Heritage soon found itself in financial straits, and its directors became uneasy for their shareholders, 26,000 (75 percent) of whom were elderly. Two years later, the insurance company collapsed, a $440- million debacle. The Blutrich group, meanwhile, had walked away with $93 million in laundered money, and sunk over two and a half times that much in bad deals. By July 1996, Heritage's chairman pled guilty to the scam and received eight years in prison in exchange for his cooperation. Blutrich, along with several associates, was indicted the following month and has since begun to cooperate with the FBI. One of the loans that federal agents are investigating was a piddling $300,000 to underwrite Scores, a New York strip club which the Feds charge became a racket for the Gambino crime family.

In exchange for testifying and helping the FBI, Blutrich recently entered the federal Witness Protection Program--and a substantially discounted lifestyle. In court documents, one of Blutrich's former associates, Shalom Weiss, charges that during the heyday of the scam Blutrich dropped $50,000 per week "supporting a lavish lifestyle and expensive habits." The lavishness included a Porsche, a yacht, and a $12,000 wristwatch, all of which he gave up as part of his plea agreement.

Blutrich's expensive tastes included a passion for boys' basketball. According to Weiss, "much of Blutrich's ill-gotten gains were spent supporting or covering up" pedophilia. "He exploited the young boys he raped and molested. He beguiled the parents of the boys whose basketball teams he coached so he could meet his prurient need." In 1994, after a two-year sting, Blutrich was charged with multiple counts of sexual assault on a minor (to which he secured a sweetheart plea-bargain), and a story in the December 1998 Penthouse quotes an anonymous partner in Blutrich's law firm saying, " Everyone knew what Michael was doing with these young boys. On more than one occasion a mother of one of these boys would come up to the office screaming and complaining about what Blutrich was doing." According to the story, several sources "close to the situation" said Cuomo left the firm in 1988 in part because of Blutrich's behavior. A former partner of Cuomo's disputes this, however. "That's a total lie. No one had knowledge that (Blutrich) was involved in any of this s--t," says the source, who wishes to remain anonymous.

Cuomo downplays his relationship with Blutrich. In a letter to TAS, the secretary's Fort Lauderdale attorneys wrote, "Many

years ago, Secretary Cuomo practiced in a law firm with Mr. Blutrich and participated with many investors, including Mr. Blutrich, in a tax-credit syndication." In fact, along with Blutrich and Lucille Falcone, Cuomo was one of three general partners in L&M Associates, a tax-sheltered oil and gas investment. And although the partnership began many years ago (September 17, 1986), it was not until January 21, 1997--the day before his Senate confirmation hearing to become housing secretary--that Cuomo quit doing business with Blutrich and sold his interest in L&M at a loss. A monthly disbursement check to Cuomo from the venture, a copy of which TAS has obtained, bears Blutrich's signature, and an accompanying letter shows that it was mailed in 1995 to Cuomo's HUD address, with "best personal regards."

Cuomo did not have to sell his stake in L&M to become secretary; he need only have recused himself from decisions involving the partnership (which he had done two weeks earlier). That he ultimately did sell seems to suggest he was troubled by doing business with an accused criminal. Yet Blutrich's fraud case had been widely reported months earlier, and Cuomo's former business associates had known about it almost immediately. "After...the firm was raided by the FBI...a former employee called me," says Cuomo's former partner. "I think that call, I'm sure, went out all over the city. And that's when I became aware that the FBI was investigating Michael in connection with Scores and the Mob." Presumably, it was only the prospect of public scrutiny that prompted Cuomo to finally withdraw his investment.

Better Left Unsaid

Less than a month after the ink dried on the second Oceanmark settlement in November 1996, Andrew Cuomo was nominated for HUD secretary. A month later, accompanied by his wife Kerry Kennedy (whom he had married in 1990), one of their two daughters, his mother Matilda, sister Maria, and mother-in-law Ethel Kennedy, Cuomo sailed through an adulatory confirmation hearing notable only for what was not brought up: Oceanmark Federal Savings and Loan.

The chairman of the Senate committee charged with confirming Andrew was Alfonse D'Amato, whose hearty dislike for the Cuomos was well known--and generously reciprocated--after many years' rivalry in New York politics. D'Amato might have been expected to turn the hearing into a blood bath, given the ample press coverage Oceanmark had received in the preceding decade. What's more, Florida's Connie Mack also sat on the committee. AHUD lawyer confirms that a Florida GOP official sent committee members a package alerting them to the Oceanmark imbroglio. Amazingly, however, the thrift never came up.

Senate Banking sources say the oversight had more to do with D'Amato protecting his own chairmanship than Andrew Cuomo's well-being. There was speculation at the time that Cuomo might challenge the New York senator in his 1998 campaign, and that he posed a significant threat. (A Mason-Dixon poll conducted at the time showed Cuomo edging out D'Amato 41-38 percent.) According to these sources, it was understood that if D'Amato could protect his seat by sequestering Cuomo on HUD's top floor, so much the better. " Generally a lot of people felt there were understandings that obviously they were going to try to stay out of each other's way," says a senior committee aide.

Another reason that Cuomo's involvement with Oceanmark wasn't mentioned at the hearing may be that D'Amato had his own not-so-kosher connections to the New York Group. During the 1980's D'Amato was embroiled in a nasty HUD scandal of alleged favoritism, back-scratching, and campaign donor quid pro quos. Goldstein, a heavy D'Amato donor, and seven members of the New York Group realized a $17-million windfall from a juicy HUD packagepatched together by a senior HUDofficial, Joseph Monticciolo, and pushed through by D'Amato. Upon leaving HUD, Monticciolo became the titular head of a Goldstein investment group that included these New York Group members. Congressional and Justice probes were launched. Ultimately Monticciolo rolled and said D'Amato asked him to cover for the senator, but the case could not be made. These eight investors at one time owned nearly half of the New York Group's shares in Oceanmark, according to documents from Cuomo's files.

If D'Amato wasn't going to bring up Oceanmark, neither was Cuomo--even if it meant a material omission on his nomination form. Cuomo will not explain why he did not list the Oceanmark suit among the court cases in which he had been a defendant. His HUD lawyers wrote TAS that "The FBI, Department of Justice, and U.S. Senate (Republican controlled) have all stated that all nomination forms and procedures were correctly complied with by Mr. Cuomo." But there is no public record of any such statements. What's more, according to the Office of Government Ethics, only the Senate Banking committee would have evaluated Cuomo's questionnaire. Asked why Cuomo did not divulge that he was investigated by federal banking regulators, HUD lawyers reply with word games. "Mr. Cuomo was merely a witness in connection with an FHLBB examination of Oceanmark," they claim, and consequently not directly the subject of the inquiry.

Young Cuomo is considered one of the Democratic Party's fastest-rising stars. He has indicated he'd like to play a major role in Al Gore's New York campaign machine in 2000, and Washington rumor holds that he's a strong contender for the second spot on a Gore ticket. More recent speculation predicts a possible run for retiring Senator Daniel Patrick Moynihan's seat in 2000. The GOP opponent in that race could turn out to be none other than Alfonse D'Amato. If that's the case, you can bet the bank on one mud ball that neither candidate will be throwing.

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BODY:

The office of Sen. Patrick S. Leahy, D-Vt., issued the following statement:

Statement of Sen. Patrick Leahy:

After months of stonewalling by this Administration, we are still trying to uncover the truth about the abuse of prisoners in U.S. custody overseas. I have long said that somewhere in the upper reaches of the executive branch a process was set in motion that rolled forward until it produced this scandal. To date, senior Administration officials have avoided any accountability for these atrocities - confirming them to presidential appointments would only underscore this Senate's willingness to ignore its oversight responsibility.

Last year, the Senate was asked to consider the nomination of Jay Bybee to the Ninth Circuit Court of Appeals. During Mr. Bybee's nominations proceedings many Members of the Judiciary Committee questioned him about his legal work - as Assistant Attorney General for the Office of Legal Counsel (OLC) at the Justice Department - on issues concerning interrogation techniques, the applicability of the Geneva Conventions to individuals in U.S. custody, and the legal underpinnings of the fight against terror. His answers were non-responsive. For example, when I asked him to discuss his thinking about the status of detainees, Mr. Bybee responded: "As an attorney at the Department of Justice, I am obligated to keep confidential the legal advice that I provided to others in the executive branch. I cannot comment on whether or not I have provided any such advice and, if so, the substance of that advice." One of the nominees on our agenda today, Mr. Nahmias, has provided similar responses to me today on similarly crucial issues.

Despite these non-responsive answers, Mr. Bybee's nomination was strongly pushed by the Administration and he promised the Senate that he would be fair and impartial. So, he was confirmed to a lifetime position on the Ninth Circuit by the Senate on March 13, 2003 by a vote of 74-19.

Since his confirmation, we have learned of the "torture memo" that he signed in August 2002, while his nomination was pending for consideration by the Senate. In this memo he advised the President that he could ignore laws forbidding torture, in violation of international law, and that individuals acting pursuant to the president's commander-in-chief authority could be shielded from prosecution under U.S. torture statutes and the U.N. Convention Against Torture for torturing detainees. Mr. Bybee's aggressive and partisan legal work for the President apparently earned him a promotion to a lifetime job on the federal bench.

Now, however, with the scandal surrounding his recommendations, the Bush Administration has repudiated the memo and senior Justice Department officials have said that the memo would be withdrawn and rewritten. However, as a group of lawyers, including 12 former presidents of the American Bar Association and several former federal judges, wrote in a memorandum to the President in August, this subsequent repudiation "coming after public outcry, confirms [the Bybee memo's] original lawless character."

Unfortunately, because of his evasiveness, we did not know about a significant part of his record - and his failure to follow the law - prior to his confirmation. Had Mr. Bybee's role in sanctioning cruel, inhumane and degrading treatment and

DEF02461
PORT Exhibit 1118

abandoning the rule of law been known before his confirmation, the Senate would not have accepted his promise that he would simply follow the law. His job at the Justice Department was akin to a judicial role in which he was supposed to advise the President on what the law was, not what the President wanted it to be. Mr. Bybee distorted the law to conclude what he wanted to conclude and give the President unchecked authority to authorize barbaric acts.

The record of Mr. Bybee should give us all pause in considering Mr. Nahmias' nomination today. That record demonstrates that when we confirm individuals in this Administration who do not candidly describe their role in considering crucial legal issues we take too great a risk. New information has come to light since Mr. Bybee's confirmation - information that the nominee failed to disclose to the Senate during his consideration - that should serve as a lesson to us as we consider the nomination of David Nahmias.

We are asked to consider the nomination of David Nahmias to serve as a U.S. Attorney in Georgia. Mr. Nahmias has held senior positions at the Department of Justice and unequivocally supported broad executive power in the war on terror - positions that the Supreme Court has soundly rejected. At the Department of Justice, he has worked on the legal underpinnings of the President's war against terror and given speeches about enemy combatants and the applicability of the Geneva Conventions, among other issues.

In speeches, he has unequivocally supported the President's authority as Commander in Chief to designate and detain suspected terrorists, including American citizens, as enemy combatants without judicial review by an Article III court. In the case of the American citizens detained as enemy combatants, he argued that there was no reason for judicial review of their detentions because they, "received the absolute ultimate executive branch process," because the "President of the United States, operating as the Commander-in-Chief, personally reviewed their cases, and personally designated them as enemy combatants." The Supreme Court strongly rejected this position this year and held that the detainees in Guantanamo Bay and U.S. citizens being held as enemy combatants have the right to challenge their detentions in federal courts.

Mr. Nahmias has also made other troubling comments - such as saying that having hearings for enemy combatants would undermine national security; and that what is "unusual about the military commissions" is "the amount of procedural protection that's being offered in those commissions compared to the way they work historically and in other parts of the world."

I asked Mr. Nahmias questions about his views on the rights of enemy combatants, his role in investigating, approving, or otherwise reviewing rules, procedures, or guidelines involving the interrogation of individuals held in the custody of the U.S. government or an agent of the U.S. government, and his role in the prosecution of domestic terrorism cases. His original answers were largely non-responsive, despite the number of words used, and I sent him further questions to clarify his record and views. Again, he failed to provide complete responses.

For example, I asked him about his role in the development or review of advice from the Office of Legal Counsel on the interrogation of detainees, a serious and important issue to this Senate and the American people. As we all now know, Mr. Bybee's torture memo was written during Mr. Nahmias' tenure at the Department. This memo redefined torture to allow all sorts of brutal treatment (such as mock burial alive, simulated drowning, electrocution, tearing off of fingernails, and other such barbaric treatment) so long as the pain caused is not akin to organ failure, and concluded that, as commander in chief in the war against terror, the President and federal agents are not constrained by anti-terror laws.

Before confirming Mr. Nahmias to this important appointment, Senators should know what role he played in the development of this policy. We should know what role he continues to play in these matters. This is an area where bipartisan leaders and attorneys have called for increased Senate oversight and action. Unfortunately, however, Mr. Nahmias decided to give us as limited information as possible while on its face appearing to answer the question. He does not thoroughly describe his communications with OLC, the nature of his work, or what he was asked to do. Instead, he writes, "While I have participated in portions of that internal deliberative process [related to the interrogation of detainees], it would not be appropriate for me to comment in detail about my involvement in the process."

U.S. Attorneys serve as the nation's lead prosecutors and conduct most of the work in which the United States is a party and should not be selected merely on the basis of partisan loyalty. Mr. Bybee's nomination reminds us of the importance of careful review, and tells us something about the sort of individuals President Bush is selecting. In his case - and the case of some of the other 200 nominees confirmed for President Bush - the Senate has perhaps acted too promptly to confirm nominees with questions remaining in their records.

Despite two rounds of questions, I still do not know the full extent of Mr. Nahmias's role in the review of interrogation procedures for detainees, and whether he worked to sanction cruel, inhumane and degrading treatment, or assisted in the distortion of the rule of law to give the President unlimited authority. For this reason, I cannot support his nomination today.

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BAXTER ROLE UPHELD IN I.B.M. CASE The New York Times June 18, 1982, Friday, Late City Final Edition

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June 18, 1982, Friday, Late City Final Edition

SECTION: Section D; Page 1, Column 6; Financial Desk

LENGTH: 677 words

HEADLINE: BAXTER ROLE UPHELD IN I.B.M. CASE

BYLINE: By ANDREW POLLACK

BODY:
A Justice Department internal investigation has concluded there was no conflict of interest involved when William F. Baxter, the Assistant Attorney General in charge of the antitrust division, dismissed the Government's suit against the International Business Machines Corporation, a department official said yesterday.

J. Paul McGrath, an Assistant Attorney General, disclosed the findings of the investigation to an appeals court in New York. He told the three-judge panel that the Justice Department considers the dismissal final and does not plan to reopen it.

"The findings do not raise any questions about the propriety of the dismissal," Mr. McGrath said. "There was no conflict of interest which barred him from doing that," he added, referring to Mr. Baxter.

Question Raised

But he said the report questions whether Mr. Baxter should have disclosed to Congress his prior dealings with I.B.M., which did not come to light until after Jan. 8, when Mr. Baxter dismissed the 13-year-old case as being without merit.

The disclosure of the Justice Department's conclusions appeared to deal a blow to attempts by opponents of the dismissal to keep the case alive.

Federal District Judge David N. Edelstein, who presided over the I.B.M. case, has scheduled a hearing Monday on whether the dismissal should be nullified because of Mr. Baxter's past consulting work for I.B.M. Last month the judge held a hearing on whether the public should be allowed to comment on the dismissal under a law known as the Tunney Act.

Yesterday's hearing before the United States Court of Appeals for the Second Circuit was in response to an I.B.M. motion that Judge Edelstein be made to cease holding hearings relating to the case and that he be removed from the case because of bias against I.B.M. The three appellate judges did not immediately rule on the I.B.M. requests.

Links With Corporation

The investigation of Mr. Baxter by the Justice Department's Office of Professional Responsibility began in March after it came to light that as a Stanford University law professor in the 1970's, he had been paid $1,500 by a law firm defending I.B.M. to help evaluate expert witnesses.

Subsequently, several other links between I.B.M. and Mr. Baxter were discovered: Mr. Baxter in 1976 had written a letter to the incoming Carter Administration transition team saying the case should never have been brought; a grant from I.B.M. had financed part of a year's research by Mr. Baxter in the late 1960's, and last fall, while in the process of deciding to drop the I.B.M. case, Mr. Baxter was arguing on I.B.M.'s behalf before officials of the European Economic Community, which also has an antitrust suit pending against the company.

Rex E. Lee, the Justice Department's Solicitor General, who is in charge of acting on the report, said in a telephone interview from Washington that a fuller statement of findings, though not the entire report, would eventually be released. He said he had still not decided what to do about Mr. Baxter's failure to disclose his dealings with I.B.M. during his Senate confirmation hearings.

DEF02464
PORT Exhibit 1119

Friends of the Court

Judge Edelstein did not appear at yesterday's hearing and no lawyer representing him spoke. The judge represented himself by filing a brief with the appeals court last week.

However, lawyers for two friends of the court - Philip N. Stern, a philanthropist and writer, and the Public Citizen Litigation Group, a public interest group - argued that Judge Edelstein had the right to continue his actions.

They argued that the Tunney Act, which provides for public comment on Federal antitrust suit settlements, should also apply to antitrust suit dismissals. The Justice Department agreed with I.B.M. that Judge Edelstein should cease his hearings but did not agree he should be removed from the case.

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The Associated Press February 1, 1980, Friday, PM cycle

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February 1, 1980, Friday, PM cycle

SECTION: Washington Dateline

LENGTH: 960 words

BYLINE: By **LAWRENCE L. KNUTSON,** Associated Press Writer

DATELINE: WASHINGTON

BODY:
Treasury Secretary **G. William Miller** denied today he had any knowledge of bribes or other questionable payments made by Textron Corp. while he was chairman.

But he said "questionable and improper" payments were made by other corporate officials, although he said the information was withheld from him.

"It's true I was not aware," he told a news conference. "I believed I could reasonably rely on my senior people. It turned out I was incorrect."

He said that "I deeply regret" the questionable payments.

The Securities and Exchange Commission said in a complaint Thursday that Textron had made $5.4 million in payments to foreign officials, much of it while Miller was chairman, to win contracts to sell military equipment.

The SEC complaint also made a new charge that Textron spent $600,000 to entertain Pentagon officials during Miller's tenure without informing stockholders, as required by federal law."

Regarding the Pentagon entertainment expenses, Miller said there was nothing improper in those payments, in Textron's view, because they were not illegal. He said they were primarily for meal expenses in connection with contract ngotiations and did not exceed $100 for any guest.

Sen. William Proxmire, D-Wis., said today the Senate Banking Committee, of which he is chairman, will soon decide whether to conduct a new investigation of what he called a "cover-up" and "a pattern of bribery" by Textron while Miller was its chairman.

Miller said the SEC complaint did not present any significant new information that should cause anyone to question his fitness to serve as treasury secretary.

"I do not intend to resign," he said in answer to a question. He said there has been "no communication from the president suggesting such a thing."

Proxmire said the foreign payments were "an extremely serious matter."

Proxmire cast the committee's lone vote against Miller's nomination to be Federal Reserve Board chairman in 1978. The senator said the SEC complaint "certainly confirms my opposition to Mr. Miller."

"Whether he knew about those bribes, we don't know, but he should have known," Proxmire told reporters following an appearance by Miller before the Joint Economic Committee, of which Proxmire is a member.

DEF02466

PORT Exhibit 1120

Proxmire confined his questioning of Miller today to economic matters, and did not bring up the Textron controversy.

"In this case it appears there was a cover-up by Textron when Mr. Miller was chairman, of a pattern of bribery, the SEC has now disclosed," Proxmire said.

Asked if he thought Miller ought to resign as Treasury secretary, Proxmire said, "No, no, that's entirely up to the president." But he said Americans "should insist on integrity in the highest levels of government."

Miller refused to answer reporters' questions about the SEC suit as he entered the Senate Caucus Room for the economic hearing.

The SEC says Miller knew when he headed Textron that the firm failed to disclose spending $600,000 to entertain Defense Department officials between 1971 and 1978. Most of the money was spent on meals, the complaint said.

Although such expenditures were not illegal in themselves, Pentagon officials operate under regulations prohibiting them from being on the receiving end of such entertainment from potential defense contractors.

Moreover, federal law requires that such expenditures by publicly-held corporations be disclosed to stockholders.

It was the alleged failure to make that disclosure that prompted the SEC suit, filed Thursday in U.S. District Court.

White House press secretary Jody Powell, asked about Thursday's developments, said, "I'm not in a position to make a definitive comment on this."

A Justice Department official, who asked not to be named, said the department's criminal division has been reviewing the Textron matter since it was referred by the Senate Banking Committee at the time of Miller's confirmation hearings in 1978 on his nomination to be chairman of the Federal Reserve Board.

The official said Miller is not a subject of that review, but that the department would obtain and review the SEC filing in the case.

Textron accepted a settlement in which it neither denies nor acknowledges guilt, but agrees to take various remedial actions.

The same suit says Textron paid $5.4 million to foreign officials in 10 countries to secure sales worth hundreds of millions of dollars over an 8-year period. It said some of the funds were funneled through bank accounts in Switzerland and Luxembourg.

The complaint cited payments -- Proxmire calls them "bribes" -- to officials in Iran, Mexico, the United Arab Emirates, Ceylon, Morocco, Indonesia, Colombia, the Dominican Republic, Ghana and Iraq.

Although many of the allegations involving foreign payments had been made previously, the SEC action filed Thursday was the first mentioning a domestic slush fund.

The complaint said "senior Textron officials and its chairman ... knew of this practice" and that "Textron entertainment expenses were recorded on its books in a manner designed to conceal that Textron was entertaining U.S. government personnel."

The SEC did not link Miller by name to any of the payments or allege that he lied about the foreign payments, some of which came up during his confirmation hearings to head the Federal Reserve Board, a post he held until being appointed treasury secretary last year.

In testimony at that time, Miller said he knew of no improper foreign payments made by Textron or any subsidiary. The matter of entertainment funds for U.S. government officials did not come up.

Miller was chief executive officer of Textron from 1968 through 1974 and chairman and chief executive officer from then until being appointed to the Fed post in 1978 by Carter.

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CASEY TELLS FEDERAL ETHICS AGENCY HE OMITTED THREE STOCK HOLDINGS The New York Times July 31, 1981, Friday, Late City Final Edition

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July 31, 1981, Friday, Late City Final Edition

SECTION: Section A; Page 11, Column 5; National Desk

LENGTH: 510 words

HEADLINE: CASEY TELLS FEDERAL ETHICS AGENCY HE OMITTED THREE STOCK HOLDINGS

BYLINE: By EDWARD T. POUND, Special to the New York Times

DATELINE: WASHINGTON, July 30

BODY:
William J. Casey, the Director of Central Intelligence, has notified a Federal ethics agency that he failed to disclose stock holdings in three corporations when he filed a personal financial disclosure statement in January.

According to David R. Scott, chief counsel in the Federal Office of Government Ethics, Mr. Casey, through documents submitted to the ethics agency by the Central Intelligence Agency, explained that he had inadvertently failed to list his holdings in the concerns. Mr. Casey said that he was amending his financial disclosure report to reflect this.

Mr. Scott identified the corporations as Vanguard Ventures, the Energy Transition Corporation and SWC Information Company. Mr. Casey's failure to report his stockholdings in Vanguard Ventures was reported in The New York Times Saturday. As a result, Mr. Scott said, his agency asked the C.I.A. for information.

He Values It at $50,000

According to the information supplied by the agency, Mr. Scott said, Mr. Casey valued his Vanguard holdings at $50,000.

In amending the report, Mr. Casey publicly reported stock interests in the Energy Transition Corporation, a Washington concern formed in 1979 to develop energy projects, and SWC Information Company, which is involved in publishing. It was formed in the mid-1970's.

Mr. Scott said that Mr. Casey had valued his stock in Energy Transition at $10,000 and in SWC at $15,000 value. The Ethics in Government Act of 1978, under which Mr. Casey submitted his statement, requires a Federal official to disclose holdings valued in excess of $1,000.

Not Reported to Senate Group

In the separate financial disclosure report he filed with the Senate Select Committee on Ethics during confirmation proceedings in January, Mr. Casey also did not disclose his interests in the three corporations. According to Stanley Sporkin, general counsel to the intelligence agency and a spokesman for the director, Mr. Casey disclosed to the intelligence committee this week that he had omitted his interest in the three companies in the report he filed with the panel. Mr. Sporkin said Mr. Casey's failure to report was "just an oversight."

Mr. Sporkin said The Times's article saying that Mr. Casey had not reported his Vanguard Venture stock "jogged" the director's memory. He said Mr. Casey started checking his records and discovered that he had not reported his interests in the two other companies.

In December or January, according to officials of Energy Transition, Mr. Casey resigned as a director and secretary. Robert W. Fri, president, said that the company had five stockholders and that all had once held Government posts.

He was acting administrator of the Federal Energy Research and Development Administration, a predecessor of the Department of Energy. He said that the three others were Frank G. Zarb, a former head of the Federal Energy

DEF02469
PORT Exhibit 1121

Administration; Charles W. Robinson, a former deputy Secretary of State; and William Turner, a former delegate to the Organization for Economic Cooperation and Development.

GRAPHIC: Illustrations: Photo of William Casey arriving for Senate hearing

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Nominees sunk by tax and nanny problems for years The Associated Press January 14, 2009 Wednesday

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January 14, 2009 Wednesday

SECTION: WASHINGTON DATELINE

LENGTH: 734 words

HEADLINE: Nominees sunk by tax and nanny problems for years

BYLINE: By MICHAEL J. SNIFFEN, Associated Press Writer

DATELINE: WASHINGTON

BODY:

The one excuse President-elect Barack Obama's nominees shouldn't be using if they encounter tax and nanny problems is that they didn't realize there would be a problem. Since 1993, unpaid taxes and immigration violations, usually related to household help, have sunk more than one presidential nominee with the whole world watching. But a few have survived to take office anyway.

ZOE BAIRD President Bill Clinton's first nominee for attorney general withdrew in 1993 after it was learned that the $500,000-a-year corporate lawyer employed an illegal immigrant Peruvian couple to provide nanny services for her son and chauffeur her around and didn't pay the required Social Security taxes for them. A federal law enacted in the fall of 1986 made it illegal to hire undocumented workers. Her case gave birth to the term "Nannygate."

KIMBA WOOD Amazingly, just two weeks later, Wood, a federal judge in New York who was expected to be Clinton's second choice for attorney general, withdrew her name. She admitted her baby sitter of seven years had been in the country illegally when hired in March 1986 before such hiring was against the law. Wood stressed she had broken no laws and had paid all required employment taxes.

CHARLES RUFF After Baird and Wood, this Washington lawyer and former Justice Department official was removed from Clinton's "short list" of candidates for deputy attorney general after it was learned he failed to pay Social Security taxes for a woman who did domestic work for him one day a week over the previous eight years.

RON BROWN Clinton's then-newly confirmed commerce secretary acknowledged in 1993 he had not paid Social Security taxes for a woman who cleaned his house three hours a week over four or five years. He said he hadn't thought he owed taxes because she worked so few hours, but he scurried to pay the back taxes and penalties and remained in office.

FEDERICO PENA Like Brown, Pena had already been confirmed as to his post, transportation secretary in this case, when the Baird case prompted him to acknowledge he failed to pay Social Security taxes for a substitute baby sitter who looked after his two children while their regular caretaker vacationed in 1991. He promised to pay more than $100 in back taxes.

SHIRLEY S. CHATER Chater, the president of Texas Woman's University was Clinton's nominee to head the Social Security Administration when the White House disclosed on Aug. 3, 1993, that she failed to pay Social Security taxes for a part-time baby sitter from 1969 to 1975. But she had paid the back taxes before her nomination, and she was confirmed.

BOBBY RAY INMAN The retired Navy admiral withdrew in January 1994 as Clinton's nominee to be defense secretary. Among many reasons, he listed his failure to pay required Social Security taxes for a former part-time housekeeper until just after Clinton nominated him.

DEF02471
PORT Exhibit 1122

STEPHEN BREYER When Breyer was a nominee for the Supreme Court in mid-1994, it was disclosed that the then-chief judge of the U.S. 1st Circuit Court of Appeals in Boston had failed to pay Social Security taxes for an 81-year-old U.S. citizen who worked part time in his house for 13 years. Breyer said he did not know he was supposed to pay taxes for the woman until after Baird's case, whereupon he paid the overdue taxes. He was confirmed as a justice of the high court.

MICHAEL P.C. CARNS The retired Air Force general withdrew in March 1995 as Clinton's nominee to head the Central Intelligence Agency as he acknowledged failing to make promised payments to a Filipino youth who had worked for the Carns family as a household helper overseas and whom Carns had legally brought into this country when he was transferred back.

LINDA CHAVEZ The conservative commentator withdrew in January 2001 as President George W. Bush's nominee to be labor secretary after it was disclosed that she gave a Guatemalan woman free room and board in her home and $1,500 during a two-year period in the early 1990s even though Chavez knew she was an illegal immigrant.

BERNARD KERIK The former New York police commissioner withdrew in December 2004 as Bush's nominee to be homeland security secretary. Amid a rising list of problems with the nomination, Kerik said he was backing out because he discovered he had hired an illegal immigrant as a housekeeper and nanny and failed to pay required employment taxes and make related filings on the worker's behalf.

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CONSENSUS-BUILDING SKILLS GAVE NOMINEE THE EDGE The Miami Herald May 14, 1994 Saturday

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May 14, 1994 Saturday
FINAL EDITION

SECTION: FRONT; A; Pg. 13

LENGTH: 973 words

HEADLINE: CONSENSUS-BUILDING SKILLS GAVE NOMINEE THE EDGE

BYLINE: AARON EPSTEIN AND ANGIE CANNON Herald Washington Bureau

BODY:

Stephen G. Breyer, a federal appeals judge in Boston, was nominated Friday to the Supreme Court -- a job he narrowly missed one year ago -- because his first-rate intellect and absence of ideology give him an unusually broad political appeal.

"I am flattered and I am honored," Breyer told reporters in Boston after Clinton announced the nomination outside the White House. "I believe very deeply in the Constitution . . . and the lives that it touches among the people."

In the end, Clinton said, he rejected Interior Secretary Bruce Babbitt because "I couldn't bear to lose him from the Cabinet" and decided against Arkansas federal Judge Richard Arnold because he has cancer and is undergoing radiation treatments.

Another factor in the president's decision may have been that, of the three finalists, Breyer, 55, would be the easiest to win Senate confirmation, as numerous senators have made clear in recent days.

In fact, confirmation will be "a slam dunk," predicted Sen. Orrin Hatch of Utah, the Senate Judiciary Committee's top Republican. Breyer is "honest, compassionate, a man with a big heart and an excellent legal scholar," Hatch said, and other Republican senators agreed.

On the liberal side, Sen. Edward M. Kennedy, D-Mass., called Breyer "a brilliant legal scholar with a profound understanding of the law and its impact on the lives of real people."

Sen. Bob Graham, D-Fla., said he supports Breyer's nomination because the judge has an outstanding record on the federal bench, adding, "I anticipate an expedited and relatively noncontroversial confirmation."

Sen. Connie Mack, R-Fla., said Breyer is a respected jurist with qualifications suited for a seat on the Supreme Court. "I will reserve final judgment on (his) nomination until there has been a thorough review of his record," he said.

Clinton reached his decision at 4:15 Friday afternoon and, in an unusual break with the past, decided to announce it two hours later without his nominee. Traditionally, presidents disclose their Supreme Court choices with their appointees at their sides, but Clinton had been criticized this week for repeatedly delaying his announcement.

Breyer and his family are to fly to Washington for a Rose Garden ceremony Monday.

DEF02473
PORT Exhibit 1123

Breyer is a familiar figure at the Senate Judiciary Committee, which is expected to begin confirmation hearings in July. He was the panel's chief counsel in 1979 and 1980, winning the respect of members of both parties.

President Jimmy Carter appointed Breyer to the 1st U.S. Circuit Court of Appeals in Boston in 1980 on Kennedy's recommendation.

Clinton praised his nominee as a consensus-builder with political savvy who has been exposed to "the full range of political issues" and appeals to all parts of the political spectrum.

"He's got Sen. Kennedy and Sen. Hatch together," Clinton remarked. "I wish I had that kind of political skill."

Breyer, who was informed of his appointment by telephone Friday afternoon, has strong liberal ties in his background. He was clerk to the late Justice Arthur Goldberg, lawyer for Watergate special prosecutor Archibald Cox and a former aide to Kennedy.

But he cannot be classified as a liberal.

In fact, conservative Republicans extolled Breyer for his open-minded ability to see all sides and his strong support of government deregulation of business.

"He has all the credentials that anybody would look for in a Supreme Court nominee," Hatch said.

Conservative advocate Clint Bolick, who has campaigned against liberal nominees in the past, said of Breyer: "I have not heard of anything that would give us any serious concerns about him."

But Breyer is likely to face some criticism from the left. Consumer advocate Ralph Nader, calling Breyer "the corporate candidate for the Supreme Court," said "several liberal groups will oppose the nomination even if no senators do."

Liberal Sen. Howard Metzenbaum, D-Ohio, said he had "questions about Judge Breyer's interpretation of our nation's pro-competition laws, particularly as they relate to small business."

Last year, after Clinton dropped Babbitt from his list of candidates to succeed Justice Byron White, the president concentrated on Breyer, who was recovering in a Boston hospital from a bicycling accident.

Clinton summoned Breyer to the White House for a luncheon, but decided to name another federal appeals judge, Ruth Bader Ginsburg, instead.

The Breyer candidacy also stumbled last year over his failure to pay Social Security taxes for a household helper. He since has paid, but White House counsel Lloyd Cutler said the Internal Revenue Service since has ruled that his helper did not qualify as an "employee" and that Breyer may be entitled to a refund.

A thumbnail sketch of the Supreme Court:

* William H. Rehnquist, 69. A member since 1972, elevated to chief justice by President Reagan in 1986. Popular with colleagues as "first among equals." Consistently conservative.

* Harry A. Blackmun, 85. Appointed in 1970, court's senior member. Once a moderate conservative, now a liberal. Will retire at end of court term, probably in late June.

* John Paul Stevens, 73. Appointed in 1975. May inherit Blackmun's title as court's most liberal member.

* Sandra Day O'Connor, 64. Appointed in 1981. A moderate conservative generally considered at court's ideological center.

* Antonin Scalia, 58. Appointed in 1986. Court's most outspoken conservative.

* Anthony M. Kennedy, 57. A member since 1988. A conservative who has voted with the moderate-liberal faction in some high-profile cases.

* David H. Souter, 54. Appointed in 1990. A moderate conservative whose political power on court seems to be rising.

* Clarence Thomas, 45. A member since 1991. Consistently conservative.

* Ruth Bader Ginsburg, 61. Appointed in 1993. Off to quick start as opinion writer and interrogator of lawyers. Widely viewed as moderate to liberal.

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Sotomayor Failed to Disclose to Senate Memo in Which She Argued Death Penalty Is 'Racist'

Friday, June 05, 2009
By Pete Winn, Senior Writer/Editor

(CNSNews.com) – The Judicial Confirmation Network (JCN) says Judge Sonia Sotomayor failed to disclose to the Senate Judiciary Committee a controversial document arguing that the death penalty is "racist" and a violation of the present "humanist" thinking of society.

President Barack Obama announces federal appeals court judge Sonia Sotomayor, right, as his nominee for the Supreme Court, Tuesday, May 26, 2009, in an East Room ceremony of the White House in Washington. (AP Photo/Alex Brandon)

The **1981 memo**, they say, should have been disclosed as required under Question 12 (b) of the questionnaire that the Supreme Court nominee turned in Thursday.

Question 12(b) requires a nominee to "(s)upply four (4) copies of any reports, memoranda, or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member or in which you have participated."

JCN Counsel Wendy Long sent a **letter** Friday to Senate Judiciary Chairman Patrick Leahy (D-Vt.) and members of the committee arguing that Sotomayor had not properly complied with this requirement because she had not submitted the 1981 memo on capital punishment.

"It is . . . clear that (Sotomayor) has omitted controversial material from her past in which she asserts that '[c]apital punishment is associated with evident racism in our society' and advocated public opposition to restoring the death penalty in New York state," Long wrote to the committee.

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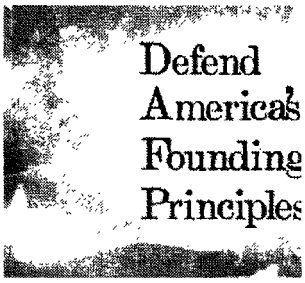

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DEF02476
PORT Exhibit 1124

Long told CNSNews.com that her group had obtained a copy of the memorandum from an undisclosed source--and was convinced of its authenticity. The copy of the memorandum attached to JCN's letter to the Judiciary Committee is signed by a three-person task force of the Puerto Rican Legal Defense and Education Fund (PRLDEF) that included Sotomayor.

Long said that in her **Senate questionnaire** Sotomayor had accurately disclosed the fact that she worked for the PRLDEF from 1980 to 1992, and held high-ranking positions with the organization.

She also truthfully listed on the questionnaire an April 10, 1981 letter from PRLDEF to then-New York Gov. Hugh Carey, opposing reinstatement of the death penalty.

"But what she omitted, and what is far more substantive and revealing," Long told CNSNews.com, "is the underlying policy memorandum that she and two other task force members sent to the board of the Puerto Rican Legal Defense and Education Fund with all their reasons for opposing the death penalty, and arguing for the organization itself to take the stand that it ultimately did take in its letter to Gov. Carey."

The memo that Sotomayor signed makes a number of "controversial, unsupported, and badly reasoned assertions" about the death penalty, Long added.

The memo, titled "Task Force on the Bill to Restore the Death Penalty in New York State," and dated March 24, 1981, states:

-- "An impressive array of highly respectable organizations have (sic) taken a public position opposed to the restoration of death penalty. All the major religious organizations have issued public statements opposed to it."

--"In the review of the current literature of the past two years, no publications have been found that challenge the evidence and the rationale presented in opposition to the death penalty."

--"Capital punishment is associated with evident racism in our society. The number of minorities and the poor executed or awaiting execution is out of proportion to their numbers in the population."

--"The problem of crime and violence in American society is so complex, it is unreasonable to think that capital punishment will result in preventing it or diminishing it."

Sotomayor Overturned Prison Regulations to Allow Santeria-Practicing Convicts to Wear Be

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--"Our present perspective on the meaning of our values in the Judeo-Christian tradition, and the state of humanistic thinking in the world judge capital punishment as a violation of those values."

--"It is counter-productive; we inflict death on the offender to manifest our opposition to his inflicting death on another."

--"It creates inhuman psychological burdens for the offender and his/her family."

The document was signed by Sotomayor and the other two members of the task force--Joseph P. Fitzpatrick, S.J., and Jorge Batista.

On Friday afternoon, a Washington Post.com story cited Fitpatrick as the "driving force behind the document," but failed to report that Sotomayor was required to disclose the document to Congress -- but didn't.

"It is certainly a significant omission from her Senate questionnaire that is clearly called for by the terms of Question 12(b)," Long added.

Long said the memorandum provides "an important data point to flesh out the picture of Sotomayor that is emerging from her other writings, speeches and judicial opinions--a hard-left liberal judicial activist, much more akin philosophically to Justices William Brennan and Thurgood Marshall, than to Justice David Souter."

"In other words, what she's saying in this memo is that everybody agrees with this: that the death penalty is racist, that there's no other view, that it completely violates the Judeo-Christian position--all of these are highly controversial positions that are certainly contradicted by other evidence," Long told CNSNews.com.

Sotomayor is President Obama's pick to replace Souter, who is retiring from the bench.

The White House announced Thursday that Sotomayor's Senate questionnaire had been returned "in record time" for a Supreme Court nominee.

"I don't know if this is a Tom Daschle-type vetting failure on the part of the White House, or whether it was potentially an intentional omission to try to rush this confirmation through without such controversial documents seeing the light of day," Long said.

"In any case, it is clear that the Sotomayor Senate questionnaire is incomplete and unreliable. It must be sent back to her and to the White House, marked 'Return to Sender,' with instructions that it is not to be redelivered to the Senate without complete answers and all required documents," she added.

A spokeswoman for the Senate Judiciary Committee said only that "committee staff is reviewing the questionnaire now."

Calls to the offices of LatinoJustice PRLDEF -- the former Puerto Rican Legal Defense and Education Fund -- were not returned by press time.

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texasnoshoe1 (1 years ago)
al91206 what are you? Some extreme left wing liberal that believes I should pay for your health care, your family in prison, and your house payment? I can't afford you or your family anymore! Don't you democrates ever get tired of taking?

sandyinohio (1 years ago)
The trouble with some people is they are "virtuous" liberals, are naive like Jimmy Carter, believe lies & liars, have no moral compass as relativism & humanism is their religion, hate America's history & culture of freedom, do not like liberty for ALL the people, and want to control everybody else & their money too! Other than that, though, they are nice people. Sort of. Well, in an Obama-like way; as charming as a snake :) I see more & more comments on various sites like : THROW OUT ALL INCUMBENTS EVERY ELECTION CYCLE! We don't need a professional political class. No more better health insurance than most taxpayers; no more better pensions than most taxpayers; no more bills written by lobbyists & think tanks. Talk about saving the country AND money! There you go! Let all politicians have to live by the bills they vote into being. What a great and novel idea: let's party like, say, Boston TEA Party! Coming near you over 4th of July. Be there, don't be square!

sandyinohio (1 years ago)
Gee, silly me, I always thought the standards for opinions on cases were what was written in the constitution, variouslaws, and past judgments, not popular opinion, no matter how many people espouse it. How can we have "rule of law" whereby people know the law beforehand and can reasonably be expected to

follow it? Must we make exceptions for people who can't or don't read popular magazines & wouldn't be expected to know the current popular opinions out in society? Or would it depend upon which "section" of society holds which opinions that one would be judged? Slippery slope indeed!

RobK (1 years ago)
Enough is enough, the Republicans needs to just stop the interviews and send this lady back to the stone age she came from. This is getting ridiculous folks and it is time to stand up and get this cougar out of the nomination process.

shooter (1 years ago)
drzarkov – the number of blacks in prison are being overtaken by whites. If trends condinue, by next year, whites will be the predominant incarcerated race in prisons: (http://www.ojp.usdoj.gov/bjs/pub/pdf/pim08st.pdf) There are more whites than blacks in local jails and have been since 2000: (http://www.ojp.usdoj.gov/bjs/pub/pdf/jim08st.pdf) More whites have been on death row than any other race since 1976: (http://www.ojp.usdoj.gov/bjs/glance/drrace.htm)

Underdog (1 years ago)
At least in the past (B.O. before Obama) criminals would get a trial and numerous appeals before a death sentence was carried out. Obama just had three extortionist (Somali pirates) "executed" because they thumbed their noses at his refusal to pay a ransom. Seems a death sentence is appropriate for some.

drzarkov (1 years ago)
As Bill Cosby observes, in 1950 the majority of convicts in US prisons were white, and minorities were under-represented, while today the majority of convicts are minorities and overrepresented in comparison to their percent of the population. Does this mean that the US was less racist in 1950? We have the Great Society to thank for tearing minority families apart and creating multiple generations of poor that have had their work ethic destroyed by a system of Federal dependence. It is this system that creates a population vulnerable to infiltration by criminal elements that has created a growing population of minorities on death row.

peter39 (1 years ago)
She should be fired before she gets started with her lies. God says in the Bible that all murderers must be executed. Murderers are killing millions of innocent people and the blood of these innocent people will be guilt upon all Democrats.

Jack Kinch(1uncle) (1 years ago)
Perhaps they wouldn't commit crime if they hadn't been created on welfare to vote demo. We never stop paying for demo mistakes.

realetybytes (1 years ago)
So the death penalty, "creates inhuman psychological burdens for the offender and his/her family." So what!!?? Who cares!!?? We should worry about how the murderer feells about the penalty of his actions? BS! Thats as stupid as killing

your parents and pleading for mercy because your an orphan! People think this is a "wise latina?' Racist, with the intellect of an 8th grader.

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Jack Kelly

Culture of Corruption II

What happened to Obama's promise to clean up Washington?

Sunday, February 08, 2009
By Jack Kelly, Pittsburgh Post-Gazette

When in the last election Democrats spoke of a "culture of corruption" in Washington, few realized they were making a promise.

The Obama administration is not yet three weeks old but already features a growing collection of ethically challenged officials.

The late-night comics have noticed. "There was a huge scientific breakthrough today," said Jay Leno. "Researchers say they are very close to finding someone from Obama's Cabinet who's actually paid their taxes."

Mr. Leno was referring to former Senate Majority Leader Tom Daschle, whose nomination for secretary of health and human services was withdrawn after it was disclosed that he didn't pay $101,000 worth of taxes owed for a car and driver, or $83,000 on consulting income, and Timothy Geithner, who was confirmed as treasury secretary despite his failure to pay payroll taxes for four years.

Hours before Mr. Daschle withdrew his nomination Tuesday, Nancy Killefer withdrew hers as chief compliance officer when it was revealed that the District of Columbia had placed a lien on her Wesley Heights mansion for failure to pay unemployment compensation tax for a household employee.

Rep. Hilda Solis, D-Calif, the nominee for secretary of labor, apparently violated House rules by failing to disclose she was an officer of a group lobbying Congress.

Eric Holder was confirmed as attorney general despite having circumvented Justice Department rules -- when he was deputy attorney general in the waning days of the Clinton administration -- to obtain a pardon for fugitive financier Marc Rich. In a 2002 report, the House Government Operations Committee described Mr. Holder's behavior in the Rich affair as "unconscionable."

On Jan. 6, New Mexico Gov. Bill Richardson withdrew as the nominee for secretary of commerce when it was disclosed that the FBI was investigating him in connection with a "pay-to-play" scandal.

Gov. Richardson was, many think, President Obama's second choice. Mr. Obama was thought to have wanted to name Penny Pritzker, his campaign finance chairman, to the commerce post, but feared that doing so might bring unwelcome scrutiny to her role in the subprime mortgage crisis. (Ms. Pritzker pioneered the nefarious instruments at her now defunct Superior bank in suburban Chicago.)

President Obama on Monday chose Republican Sen. Judd Gregg of New Hampshire for the commerce post. So on Wednesday we learn that Mr. Gregg's former legislative director was tangentially involved in the Jack Abramoff scandal.

The most recent candidate in the malleable ethics sweepstakes is Ron Sims, chosen Monday to be deputy secretary of the Department of Housing and Urban Development. As King County (Seattle) executive, Mr. Sims was fined $124,000 for "blatant" violations of Washington state's public records act for failure to release documents having to do with the financing of the stadium where the Seattle Seahawks play. Last month the state Supreme Court said the fine should be increased.

Congress has turned an indulgent eye to these ethical lapses because there are many in Congress who are guilty of the same, or worse. Charles Rangel, D-N.Y., remains chairman of the House Ways and Means Committee despite his failure to pay taxes on $75,000 in rental income, and -- according to a report issued Wednesday -- repeatedly failing to comply with congressional financial disclosure rules.

DEF02487
PORT Exhibit 1125

Sen. Chris Dodd, D-Countrywide Mortgage, remains as chairman of the Senate Finance Committee despite having received a sweetheart loan from one of the worst of the subprime mortgage villains.

The Charlotte Observer endorsed Barack Obama for president, but is having second thoughts:

"Two weeks into the Obama presidency, we like his campaign better than his administration," the Observer said Wednesday. "While some of his appointments are outstanding, others were either badly botched or reflect a half-hearted commitment to the change principle central to his ballot box success."

Jack Kelly is a columnist for the Post-Gazette and The (Toledo) Blade (jkelly@post-gazette.com, 412 263-1476). More articles by this author

First published on February 8, 2009 at 12:00 am

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LENGTH: 646 words

HEADLINE: Ginsburg Hearings End In a Secluded Meeting

BYLINE: By NEIL A. LEWIS, Special to The New York Times

DATELINE: WASHINGTON, July 23

BODY:
The Senate Judiciary today held its first closed hearing ever to hear personal accusations against a Supreme Court nominee, but the session for Judge Ruth Bader Ginsburg was really just for practice, committee members said.

No substantive charges surfaced in the 20-minute session, committee aides said, and Judge Ginsburg seemed headed for an easy if not unanimous confirmation after three days of public testimony. The committee vote is scheduled for Thursday.

Senator Joseph R. Biden Jr., the Delaware Democrat who leads the committee, said this month that he would hold a closed hearing for Judge Ginsburg and any future Court nominee so that committee members could review the classified investigation of the nominee by the Federal Bureau of Investigation and any accusations brought about the candidate's personal conduct. Mr. Biden, who was criticized for his handling of Prof. Anita F. Hill's accusations against Justice Clarence Thomas during his confirmation hearings in 1991, added the closed hearing to avoid future problems.

Committee spokesmen said they would not discuss what occurred today, but an official present at the session said the main topic was one that had already been aired publicly at Thursday's session: Judge Ginsburg's initial failure to list as a gift an initiation fee for a country club near Washington. In the early 1980's, when it routinely waived fees as a courtesy to members of the Federal bench, the Woodmont Country Club waived its $25,000 initiation fee for Judge Ginsburg and her husband, Martin D. Ginsburg, a prominent tax lawyer.

Why She Left Club

Judge Ginsburg has said that she regretted not listing the waived fee as a gift on her financial disclosure forms. But she did refer to the waiver indirectly in her statement to the committee. She said that she resigned from the club when it changed its policy to require payment of the fee. She resigned, she said, because the imposition of the fee obliged a colleague on the appeals court, Judge Harry T. Edwards, to resign because he could not afford it.

She said that she never knew whether the change in policy was aimed specifically at Judge Edwards, who was the club's only black member at the time, but that it seemed as if it might have been. As a result, she and her husband left Woodmont and then joined a different golf club, which had several black members.

Judge Ginsburg, a 60-year-old member of the United States Court of Appeals for the District of Columbia Circuit, was nominated by President Clinton last month to replace Justice Byron R. White, who retired this spring. If she becomes the nation's 107th justice, Judge Ginsburg would be the first Justice placed on the court in 26 years by a Democrat and the second woman ever, after Justice Sandra Day O'Connor.

Judge Ginsburg completed her public testimony Thursday night, ending three days in which she offered strong support for the constitutional right to abortion but fended off questions on other issues.

Most Speakers in Favor

DEF02489
PORT Exhibit 1126

The expedited schedule was designed to allow her to be sworn in as soon as possible so she may acquaint herself with the Court's docket this summer in preparation for the beginning of the fall term in October.

At today's final public session, the committee heard testimony from six panels of witnesses, all but one of which spoke in favor of the nomination. The opposition panel included six speakers who mainly objected to Judge Ginsburg's statement on abortion.

"Women don't need to mutilate their bodies and kill their children to be equal to any man," said Kay C. James, vice president of the Family Research Council.

Professor Gerald Gunther of the Stanford Law School, who testified in favor of the nomination, said Judge Ginsburg "possesses the requisite intellect, temperament and character" to be a great Supreme Court justice.

GRAPHIC: Photo: Judge Ruth Bader Ginsburg, second from left, walking to a session of the Senate Judiciary Committee yesterday, the last day of her confirmation hearings after three days of testimony. The committee will vote on Thursday. With her was Ron Klain of the White House Counsel's office. (Michael Geissinger for The New York Times)

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January 26, 1977, Wednesday, Final Edition

SECTION: First Section; A1

LENGTH: 1278 words

HEADLINE: Bell Wins Approval in 75-21 Vote;
Bell Is Confirmed as Attorney General;
Attorney General May Face Clash On Ousting Kelley

BYLINE: By Spencer Rich and John M. Goshko, Washington Post Staff Writers

BODY:
Griffin B. Bell won confirmation as Attorney General from a divided Senate yesterday, only to find himself facing a sensitive new problem - a possible clash with FBI Director Clarence M. Kelley over Kelley's departure from the FBI.

The potential confrontation was precipitated by Kelley, who sent Bell a letter stating that he does not intend to retire as FBI director until Jan. 1, 1978. That ran directly counter to the widespread impression that Bell and President Carter want to put their own man at the head of the embattled FBI at a much earlier date.

The problem with Kelley surfaced as the Senate confirmed Bell by a vote of 75 to 21. The approval came only after a heated debate in which some senators blasted Bell's civil rights record, challenged his judicial ethics and raked over his appointment as an act of political cronyism by Carter.

With the confirmation of Bell and the swearing in yesterday of Joseph A. Califano Jr. as Secretary of Health, Education and Welfare, 10 of Carter's 11 Cabinet nominees have been approved. The last, F. Ray Marshall of Texas, is expected to be confirmed as Secretary of Labor by the Senate today.

Bell, a 58-year-old Atlanta lawyer and former federal appeals court judge, was the most controversial of the Cabinet choices - a fact underscored by the substantial number of votes against him yesterday.

His nomination was vigorously opposed by several civil rights groups, and their charges were echoed by the two Republican senators. Charles McC. Mathias Jr. (Md.) and Edward W. Brooke (Mass.), who led the assault on Bell in yesterday's debate.

They said they opposed Bell because he had been an adviser to former Georgia Gov. Ernest Vandiver during that state's "massive resistance" to school desegregation in the late 1950s; because his decisions as an appeals court judge from 1962 to 1976 had an allegedly anti-civil rights cast, and because he had upheld the attempt to bar Julian Bond, a black, from the Georgia legislature for anti-war statements.

They also criticized him for failing to disclose for six years that he had received free memberships in two Atlanta clubs that exclude blacks and other minorities, for failing to disqualify himself from a 1976 case involving a similar club, and for failing to excuse himself from ruling on a 1963 Georgia desegregation case, although he had advised state officials on the issues in that case before becoming a judge.

While these charges were ebing rehashed on the Senate floor, Bell's position as the Carter administration's biggest magnet for controversy received a boost from another quarter - revelation of the letter from Kelley.

Authoritative sources said last night that Kelley, in setting next Jan. 1 as the time for his retirement, has acted on his own initiative without consulting Bell. Kelley's aim, the sources said, was to tell Bell of his intentions; and, some sources added, put the new Attorney General on notice that he will resist efforts to remove him from the FBI directorship before that time.

DEF02491
PORT Exhibit 1127

Testifying before the Senate Judiciary Committee two weeks ago, Bell said that Kelly would give way to a new director "before too long." Although he deliberately avoided specifying a timetable, Bell's remark was widely interpreted as meaning that the changeover would take place in the near future.

Now, Kelley's letter confronts Bell with some sensitive choices. If he allows Kelley to remain until the end of the year, his action is likely to be interpreted as a backing down in the face of a challenge from the FBI director.

In addition, there is widespread feeling in law enforcement circles that Kelley's now-stated intention to retire at the end of the year would put the crisis-ridden FBI in the position of being run by a lame-duck director without influence or authority.

On the other hand, should Bell attempt to force Kelley out against his will, he would risk charges that the Carter administration is trying to bring the FBI back under the sway of partisan political influence. Such charges were heard in yesterday's Senate debate, and Kelley is understood to have made his move partly because he feels that he can count on congressional support.

Bell's reaction was to temporize by having his aides issue a statement yesterday noting that Bell does not have the legal authority to dismiss Kelley and stating that Bell "will set in motion a procedure for the orderly transfer of the directorship of the bureau." But the statement said nothing about when the new administration wants Kelley to leave.

Kelley, 65, became FBI director in July, 1973, and is serving under a law that grants the director a single term of 10 years. It was unlikely that he would have served the full term in any case, since the law states that an incumbent must retire at age 70 unless the President waives that requirement.

However, Senate sources familiar with the history of the law say categorically that the 10-year term does not preclude a President from firing the director. The FBI, they note, is part of the executive branch and its director serves at the pleasure of the President.

However, the sources note, by specifying a 10-year term the Senate did intend to insulate the office somewhat from political considerations.

Another complicating factor involves Kelley's pension. Under a new federal law, the three years that Kelley has served as director would allow his pension from earlier FBI service to be recomputed on the basis of the higher director's salary.

But the law does not take effect until Oct. 1, and Kelley would have to remain in active federal service until that date to take advantage of its provisions.

For that reason, Bell is believed to be planning to keep Kelley at the FBI in some sort of emeritus or advisory slot that would open the way for appointment of a new director.

In the Senate debate, some Republicans taunted Democratic liberals, most of whom voted for Bell although obviously uncomfortable with the appointment, for applying "a double standard."

Brooke and Sen. Bob Dole (R-Kan.) both noted that when Southern Supreme Court nominees with backgrounds similar to Bell's were sent to the Senate by a Republican President, Richard M. Nixon the Democratic majority rejected them.

Said Brooke, "I think that a Republican nominee who had engendered this kind of controversy and contradictory testimony may have been summarily rejected by this Congress."

Dole added, "Would this Senate have confirmed if President Ford had won and nominated a man with the same background . . . who belonged to restrictive country clubs . . . a close political associate, a man who contributed a substantial amount to the President's campaign? I think the answers are obvious."

"The American people are tired of watching brothers, campaign managers, law partners and old friends sprinting the inside track to the Justice Department," said Lowell P. Weicker Jr. (R-Conn.).

Mathias, in summing up the opposition, asked, "Do we automatically have to give our consent" to a Cabinet appointee merely if he "is not a convicted felon . . . or lunatic?"

On the other side, Birch Bayh (D-Ind.), who led a successful fight against two Nixon Supreme Court nominees from the South several years ago, argued that the evidence showed Bell had tired to act as a moderating influence on Vandiver during the "massive resistance" period.

"Perhaps we should not be so pious as to the standards of people 25 years ago who lived in a different part of the country," declared Bayh.

Before approving Bell, the Senate killed, 71 to 24, a move by Brooke to recommit the nomination to the Judiciary Committee.

GRAPHIC: Picture, President Carter applauds as Joseph A. Califano Jr. kisses his wife after being sworn in as Secretary of Health, Education and Welfare. By Frank Johnston - The Washington Post

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Levin: Kozinski lacks judicial temperament United Press International November 2, 1985, Saturday, PM cycle

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November 2, 1985, Saturday, PM cycle

SECTION: Washington News

LENGTH: 430 words

HEADLINE: Levin: Kozinski lacks judicial temperament

BYLINE: By CHRIS CHRYSTAL

DATELINE: WASHINGTON

BODY:
Alex Kozinski has the brains and ability to serve on the 9th U.S. Circuit Court of Appeals, but lacks proper judicial temperament, senators said at a Judiciary Committee hearing.

Kozinski, 35, the administration's nominee to the nation's second highest court, was approved by the panel Sept. 12, but Senate confirmation stalled because of allegations by former employees that he was harsh, cruel and demeaning while heading a federal office that protects government whistleblowers for exposing wrongdoing.

Committee Chairman Strom Thurmond, R-S.C., said the Senate would act on the confirmation next week and complained that a rehearing Friday into questions about Kozinski's conduct in office turned up nothing new.

"I think these are the puniest, most nitpicking charges of any I've ever heard in any hearing," Thurmond said after the daylong hearing.

Sen. Carl Levin, D-Mich., who is not on the Judiciary Committee, but was allowed to grill Kozinski, said he plans a four-hour debate of the nomination on the Senate floor.

Levin said he is "very troubled" by Kozinski's testimony that he could hardly remember terminating two sick employes, an elderly black woman suffering from cancer -- two months before her retirement -- because age and illness had slowed her performance, and a 25-year veteran who was on sick leave for high blood pressure.

"I am struck by his failure to remember the details of two very sad cases," Levin said. "I find a lack of sensitivity there."

He said Kozinski misled the committee by claiming an excellent working relationship with his former staff when six people had filed affidavits that he treated employees unfairly.

Kozinski, chief judge of the U.S. Claims Court, previously headed the Office of Special Counsel to the Merit Systems Protection Board in 1981-1982.

Sen. Charles Mathias, R-Md., the only Republican to challenge Kozinski at the rehearing, and Sen. Paul Simon, D-Ill, also questioned his temperament.

Other allegations claimed Kozinski's refusal to prosecute a sexual harassment case discouraged others from coming forward, and that he didn't tell the committee the whole story about his firing of Mary Eastwood, his predecessor at the OSC.

Eastwood testified that Kozinski was "less than honest" with the panel by implying she had dropped her appeal of the firing, when she had not, and by failing to disclose that she eventually won with back pay.

Six of eight lawyers and eight of 15 investigators quit during his regime along with half the clerical staff of the Washington office, she said.

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Senate Secrecy and Secretary Dalton The New York Times July 27, 1994, Wednesday, Late Edition - Final

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July 27, 1994, Wednesday, Late Edition - Final

SECTION: Section A; Page 20; Column 1; Editorial Desk

LENGTH: 294 words

HEADLINE: Senate Secrecy and Secretary Dalton

BODY:
When the White House announced the choice of John Dalton as Secretary of the Navy last year, it publicly praised his management skills while concealing his leadership role in a savings and loan failure that cost taxpayers more than $100 million. The Senate confirmed him unanimously, without debate, after the Armed Services Committee also praised him publicly -- while burying a major business failing and charges by Federal regulators that he had shown "gross negligence" in running the bankrupt Seguin Savings Association in Texas.

That is a shabby performance by both branches. The White House had a duty to disclose its nominee's business and regulatory problems. The Senate, which is supposed to monitor the executive branch and inform the public through the confirmation process, kept this important information not only from the public but from most senators as well.

Such an event in Mr. Dalton's career deserved to be part of the public phase of his confirmation, not hidden in executive session like some stale old charge in an F.B.I. report. The information bore directly on his qualifications to head a huge government agency that needs hard-headed management of the highest integrity. So did an incident in which the Federal Home Loan Bank Board, which Mr. Dalton once headed, took the unusual step of blocking a $750,000 fee to him from an investor group for his access to board officials and information.

Perhaps the committee did a great job of questioning and deliberating behind closed doors. If so, it can vindicate its performance and reassure the public by releasing the record of its executive session on the nomination. Such belated openness could be a modest antidote to the cynicism the committee's secrecy has spawned.

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SEN. KYL ISSUES STATEMENT ON REP. SOLIS CONFIRMATION AS SECRETARY OF LABOR US Fed News February 25, 2009 Wednesday 11:32 AM EST

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US Fed News

February 25, 2009 Wednesday 11:32 AM EST

LENGTH: 206 words

HEADLINE: SEN. KYL ISSUES STATEMENT ON REP. SOLIS CONFIRMATION AS SECRETARY OF LABOR

BODY:

WASHINGTON, Feb. 24 -- The office of Sen. Jon Kyl, R-Ariz., issued the following statement:

The U.S. Senate today approved the nomination of Rep. Hilda Solis (D-Calif.) to become the U.S. Secretary of Labor. U.S. Senate Republican Whip Jon Kyl opposed the confirmation and issued the following statement: "I opposed Rep. Hilda Solis's confirmation, in large part, due to her unwillingness to provide substantive answers during her confirmation hearing, as well as her failure to disclose her ties to the pro-labor union organization, American Rights at Work. She corrected her House disclosure forms only after the issue came to light, raising questions about her motivations to set the record straight. "And, although she was a cosponsor of the Employee Free Choice Act when she was a member of the House of Representatives, she refused to offer specifics about the issue during her hearings. "While the President is entitled to nominate those who reflect his views, I take seriously my responsibility to vet nominees. I believe Rep. Solis should have been more forthright during the confirmation process; therefore, I withheld my support."For more information please contact: Sarabjit Jagirdar, Email:- htsyndication@hindustantimes.com

LOAD-DATE: March 24, 2009

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THE FUGITIVE: EVIDENCE ON PUBLIC VERSUS PRIVATE LAW ENFORCEMENT FROM BAIL JUMPING*

ERIC HELLAND and *ALEXANDER TABARROK*
Claremont-McKenna College *George Mason University*

ABSTRACT

On the day of their trial, a substantial number of felony defendants fail to appear. Public police have the primary responsibility for pursuing and rearresting defendants who were released on their own recognizance or on cash or government bail. Defendants who made bail by borrowing from a bond dealer, however, must worry about an entirely different pursuer. When a defendant who has borrowed money skips trial, the bond dealer forfeits the bond unless the fugitive is soon returned. As a result, bond dealers have an incentive to monitor their charges and ensure that they do not skip. When a defendant does skip, bond dealers hire bounty hunters to return the defendants to custody. We compare the effectiveness of these two different systems by examining failure-to-appear rates, fugitive rates, and capture rates of felony defendants who fall under the various systems. We apply propensity score and matching techniques.

I. INTRODUCTION

APPROXIMATELY one-quarter of all released felony defendants fail to appear at trial. Some of these failures to appear are due to sickness or forgetfulness and are quickly corrected, but many represent planned abscondments. After 1 year, some 30 percent of the felony defendants who initially fail to appear remain fugitives from the law. In absolute numbers, some 200,000 felony defendants fail to appear every year, and of these, approximately 60,000 will remain fugitives for at least 1 year.[1]

* The authors' names are in alphabetical order. We wish to thank Jonathan Guryan, Steve Levitt, Lance Lochner, Bruce Meyer, Jeff Milyo, Christopher Taber, Sam Peltzman, and seminar participants at Claremont McKenna College, the American Economic Association annual meetings (2002), George Mason University, Northwestern University, and the University of Chicago.

[1] These figures are from the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics and can be found in U.S. Department of Justice, Bureau of Justice Statistics, Felony Defendants in Large Urban Counties (various years). We describe the data at greater length below. The SCPS program creates a sample representative of 1 month of cases from the 75 most populous counties (which account for about half of all reported crimes). In 1996, the sample represented 55,000 cases, which in turn represent some 660,000 filings in a year and 1,320,000 filings in the nation. The absolute figures are calculated using this total, and

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Defendants who fail to appear impose significant costs on others. Direct costs include the costs of rearranging and rescheduling court dates, the wasted time of judges, lawyers, and other court personnel, and the costs necessary to find and apprehend or rearrest fugitives. Other costs include the additional crimes that are committed by fugitives. In 1996, for example, 16 percent of released defendants were rearrested before their initial case came to trial.[2] We can be sure that the percentage of felony defendants who commit additional crimes is considerably higher than their rearrest rate. We might also expect that the felony defendants who fail to appear are the ones most likely to commit additional crimes. Indirect costs include the increased crime that results when high failure-to-appear (FTA) and fugitive rates reduce expected punishments.[3]

The dominant forms of release are by surety bond, that is, release on bail that is lent to the accused by a bond dealer, and nonfinancial release. Just over one-quarter of all released defendants are released on surety bond, and a very small percentage pay cash bail or put up their own property with the court (less than 5 percent combined); most of the rest are released on their own recognizance or on some form of public bail (called deposit bond) in which the defendant posts a small fraction, typically 10 percent or less, of the bail amount with the court.

Estimating the effectiveness of the pretrial release system in the United States can be characterized as a problem of treatment evaluation. Treatment evaluation problems can be difficult because treatment is rarely assigned randomly. Release assignment, for example, is based on a judge's assessment of the likelihood that a defendant will appear in court as well as on considerations of public safety. Correctly measuring treatment effects requires that we control for treatment assignment. In this paper, we control for selection by matching on the propensity score.[4]

We estimate the treatment effect for three outcomes—the probability that

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the release, failure-to-appear (FTA), and fugitive (defined as FTA for 1 year or more) rates from the random sample. See note 2 *infra*.

[2] U.S. Department of Justice, Bureau of Justice Statistics, Felony Defendants in Large Urban Counties, 1996 (1999) (http://www.ojp.usdoj.gov/bjs/pub/pdf/fdluc96.pdf).

[3] Justice delayed can mean justice denied in practice as well as in theory. Thousands of cases are dismissed on constitutional grounds every year because police fail to serve warrants in a timely manner. See Kenneth Howe & Erin Hallissy, When Justice Goes Unserved: Thousands Wanted on Outstanding Warrants—but Law Enforcement Largely Ignores Them, S.F. Chron., June 22, 1999, at A1.

[4] For the matching method, see Donald B. Rubin, Estimating Causal Effects of Treatments in Randomized and Nonrandomized Studies, 66 J. Educ. Psychol. 688, 701 (1974); Donald B. Rubin, Assignment to Treatment Group on the Basis of a Covariate, 2 J. Educ. Stat. 1, 26 (1977); Paul R. Rosenbaum & Donald B. Rubin, Reducing Bias in Observation Studies Using Subclassification on the Propensity Score, 79 J. Am. Stat. Assoc. 516, 524 (1984); Rajeev H. Dehejia & Sadek Wahba, Causal Effects in Non-experimental Studies: Re-evaluating the Evaluation of Training Programs (Working Paper No. 6586, Nat'l Bur. Econ. Res. 1998); James J. Heckman, Hidehiko Ichimura, & Petra Todd, Matching As an Econometric Evaluation Estimator, 65 Rev. Econ. Stud. 261, 294 (1998).

a defendant fails to appear at least once, the probability that a defendant remains at large for 1 year or more conditional on having failed to appear (what we call the fugitive rate), and the probability that a defendant who failed to appear is recaptured as a function of time.

The earlier economic studies of the bail system examine the role of the bail amount in the decision to fail to appear, generally finding that higher bail reduces FTA rates.[5] These studies did not focus on the central issue of this paper—the different incentive effects of the various release types.[6]

II. History of Pretrial Release and Incentive Effects of Release Systems

Although money bail is still the most common form of release, money bail and especially the commercial surety industry have come under increasing and often virulent attack since the 1960s.[7] Bail began as a progressive measure to help defendants get out of jail when the default option was that all defendants would be held until trial. In the twentieth century, however, the default option was more often thought of as release, and thus money bail was reconceived as a factor that kept people in jail. In addition, the greater burden of money bail on the poor elicited growing concern.[8] As a result,

[5] William M. Landes, The Bail System: An Economic Approach, 2 J. Legal Stud. 79, 105 (1973); William M. Landes, Legality and Reality: Some Evidence on Criminal Procedure, 3 J. Legal Stud. 287 (1974); Stevens H. Clark, Jean L. Freeman, & Gary G. Koch, Bail Risk: A Multivariate Analysis, 5 J. Legal Stud. 341, 385 (1976); Samuel L. Myers, Jr., The Economics of Bail Jumping, 10 J. Legal Stud. 381, 396 (1981).

[6] Ian Ayres & Joel Waldfogel, A Market Test for Discrimination in Bail Setting, 46 Stan. L. Rev. 987, 1047 (1994), demonstrates the subtlety of the distinctions made by bond dealers in setting bail bond rates. Although the courts (in New Haven, Connecticut, in 1990) set higher bail amounts for minority defendants than for whites, Ayres and Waldfogel find that bond dealers acted in precisely the opposite manner. What this pattern suggests is that judges set higher bail for minority defendants than for white defendants with the same probability of flight. Bond dealers are then induced by competition to charge minorities relatively lower bail bond rates.

[7] Floyd Feeney, Foreword, in Bail Reform in America, at ix (Wayne H. Thomas, Jr., ed. 1976), for example, writes that "the present system of commercial surety bail should be simply and totally abolished. . . . It is not so much that bondsmen are evil—although they sometimes are—but rather that they serve no useful purpose." American Bar Association, Criminal Justice Standards, ch. 10, Pretrial Release, Standard 10–5.5, Compensated Sureties, 114–15 (1985), refers to the commercial bond business as "tawdry" and discusses "the central evil of the compensated surety system." When Oregon considered reintroducing commercial bail, Judge William Snouffer testified, "Bail bondsmen are a cancer on the body of criminal justice" (quoted in Spurgeon Kennedy & D. Alan Henry, Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision (1997)). Supreme Court Justice Harry Blackmun called the commercial bail system "offensive" and "odorous." See Schilb v. Kuebel, 404 U.S. 357 (1971).

[8] In order to provide appropriate incentives, money bail is typically higher for the rich than the poor. Thus, it is not a priori necessary that money bail should discriminate against the poor, although in practice this does occur owing to nonlinearities and fixed costs in the bail process. Assume that money bail is set so as to create equal FTA rates across income classes. In such a case, there is no discrimination against the poor in the setting of bail. But if the bail

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significant efforts were made, beginning in the 1960s, to develop alternatives to money bail, and four states—Illinois, Kentucky, Oregon, and Wisconsin—have outlawed commercial bail altogether.

In place of commercial bail, Illinois introduced the Illinois Ten Percent Cash Bail or "deposit bond" system. In a deposit bond system, the defendant is required to post with the court an amount up to 10 percent of the face value of the bond. If the defendant fails to appear, the deposit may be lost and the defendant held liable for the full value of the bond. If the defendant appears for trial, the deposit is returned to the defendant, less a small service fee in some cases.[9] Some counties will also release defendants on unsecured bonds. Unsecured bonds are equivalent to zero-percent deposit bonds. That is, defendants released on an unsecured bond are liable for the full bail amount if they fail to appear, but they need not post anything to be released.

The pretrial release system is designed to ensure that defendants appear in court. It is often asserted that the commercial bail system discourages appearance. In a key Supreme Court case, for example, Justice Douglas argued that "the commercial bail system failed to provide an incentive to the defendant to comply with the terms of the bond. Whether or not he appeared at trial, the defendant was unable to recover the fee he had paid to the bondsman. No refund is or was made by the professional surety to a defendant for his routine compliance with the conditions of his bond."[10]

Similarly, Jonathan Drimmer said, "Hiring a commercial bondsman removes the incentive for the defendant to appear at trial."[11] John S. Goldkamp and Michael R. Gottfredson suggest that the "use of the bondsman defeated the rationale that defendants released on cash bail would have an incentive to return,"[12] and in their influential set of performance standards for pretrial release, the National Association of Pretrial Service Agencies[13] said that under commercial bail, "the defendant has no financial incentive to return to court."[14]

In light of the persistent criticism that surety bail encourages failure to appear, it is perhaps surprising that the data consistently indicate that defendants released via surety bond have lower FTA rates than defendants released under other methods. Part of this might be explained by selection—FTA

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amounts necessary to ensure equal FTA rates are not linear in wealth, then such rates can generate unequal rates of release across income classes.

[9] National Association of Pretrial Service Agencies, Performance Standards and Goals for Pretrial Release (2d ed. 1998).

[10] Schilb v. Kuebel, 404 U.S. at 373.

[11] Jonathan Drimmer, When Man Hunts Man: The Rights and Duties of Bounty Hunters in the American Criminal Justice System, 33 Hous. L. Rev. 731, 742 (1996).

[12] John S. Goldkamp & Michael R. Gottfredson, Policy Guidelines for Bail: An Experiment in Court Reform 19 (1985).

[13] See note 9 *supra*.

[14] See also Thomas, ed., *supra* note 7, at 13. Because of this issue, Thomas calls the surety system "irrational."

rates, for example, may be higher for those defendants charged with minor crimes—perhaps these defendants reason that police will not pursue a failure to appear when the underlying crime is minor—and defendants charged with minor crimes are more likely to be released on their own recognizance than on surety release. A second reason, however, is that bond dealers, just like other lenders, have numerous ways of creating appropriate incentives for borrowers.

Most obviously, a defendant who skips town will owe the bond dealer the entire amount of the bond. Defendants are often judgment proof, however, so bond dealers ask defendants for collateral and family cosigners to the bond (which is not done under the deposit bond system). If hardened criminals do not fear the law, they may yet fear their mother's wrath should the bond dealer take possession of their mother's home because they fail to show up for trial. In order to make flight less likely, bond dealers will also sometimes monitor their charges and require them to check in periodically. In addition, bond dealers often remind defendants of their court dates and, perhaps more important, remind the defendant's mother of the son's court date when the mother is a cosigner on the bond.[15]

If a defendant does fail to appear, the bond dealer is granted some time, typically 90–180 days, to recapture him before the bond dealer's bond is forfeited. Thus, bond dealers have a credible threat to pursue and rearrest any defendant who flees. Bond dealers report that just to break even, 95 percent of their clients must show up in court.[16] Thus, significant incentives exist to pursue and return skips to justice.

Bond dealers and their agents have powerful legal rights over any defendant who fails to appear, rights that exceed those of the public police. Bail enforcement agents, for example, have the right to break into a defendant's home without a warrant, make arrests using all necessary force including deadly force if needed, temporarily imprison defendants, and pursue and return a defendant across state lines without the necessity of entering into an extradition process.[17]

At the time they write the bond, bond dealers prepare for the possibility of flight by collecting information that may later prove useful. A typical application for bond, for example, will contain information on the defendant's residence, employer, former employer, spouse, children (names and schools), spouse's employer, mother, father, automobile (description, tags, financing),

[15] See Mary A. Toborg, Bail Bondsmen and Criminal Courts, 8 Just. Sys. J. 141, 156 (1983). Bail jumping is itself a crime that may result in additional penalties.

[16] Drimmer, *supra* note 11, at 793 (1996); Morgan Reynolds, Privatizing Probation and Parole, in Entrepreneurial Economics: Bright Ideas from the Dismal Science 117, 128 (Alexander Tabarrok ed. 2002).

[17] Drimmer, *supra* note 11. See also Taylor v. Taintor, 83 U.S. (16 Wall.) 366 (1873).

union membership, previous arrests, and so on.[18] In addition, bond dealers have access to all kinds of public and private databases. Bob Burton,[19] a bounty hunter of some fame, for example, says that a major asset of any bounty hunter is a list of friends who work at the telephone, gas, or electric utility, the post office, or welfare agencies or in law enforcement.[20]

Bond dealers, however, recognize that what makes their pursuit of skips most effective is the time they devote to the task. In contrast, public police are often strained for resources, and the rearrest of defendants who fail to show up at trial is usually given low precedence.

The flow of arrest warrants for FTA has overwhelmed many police departments, so today many counties are faced with a massive stock of unserved arrest warrants. Baltimore alone had 54,000 unserved arrest warrants as of 1999.[21] In recent years, Cincinnati has had over 100,000 outstanding arrest warrants stemming from failures to appear in court. One Cincinnati defendant had 33 pending arrest warrants against him.[22] In response to the overwhelming number of arrest warrants, most of which will never be served because of lack of manpower, some counties have turned to extreme measures such as offering amnesty periods. Santa Clara County in California, for example, has a backlog of 45,000 unserved criminal arrest warrants and in response has advertised a hotline that defendants can use to schedule their own arrests.[23]

Although national figures are not available, it is clear that the problem of outstanding arrest warrants is widespread. Texas, for example, is relatively well off with only 132,000 outstanding felony and serious misdemeanor warrants, but Florida has 323,000, and Massachusetts, as of 1997, had around 275,000.[24] California has the largest backlog of arrest warrants in the nation. The California Department of Corrections estimated that as of December 1998, there were more than 2.5 million unserved arrest warrants.[25] Many of these arrest warrants are for minor offenses, but tens of thousands are for

[18] We thank Bryan Frank of Lexington National Insurance Corporation for discussion and for sending us a typical application form.

[19] Bob Burton, Bail Enforcer: The Advanced Bounty Hunter (1990).

[20] Good bond dealers master the tricks of their trade. One bond dealer pointed out to us, for example, that the first three digits in a social security number indicate in what state the number was issued. This information can suggest that an applicant might be lying if he claims to have been born in another state (many social security numbers are issued at birth or shortly thereafter), and it may provide a lead for where a skipped defendant may have family or friends.

[21] Francis X. Clines, Baltimore Gladly Breaks 10-Year Homicide Streak, N.Y. Times, January 3, 2001, at A11.

[22] George Lecky, Police Name "200 Most Wanted," Cincinnati Post, September 5, 1997, at 1A.

[23] See Jane Prendergast, Warrant Amnesty Offered for 1 Day, Cincinnati Enquirer, November 19, 1999, for description of a similar program in Kenton County, Kentucky. See also Henry K. Lee & Kenneth Howe, Plan to Clear Backlog of Warrants: Santa Clara County Offering Amnesty to Some, S.F. Chron., January 12, 2000, at A15.

[24] Howe and Hallissy, *supra* note 3.

[25] *Id.*

people wanted for violent crimes, including more than 2,600 outstanding homicide warrants.[26] Kenneth Howe and Erin Hallissy report that "local, state and federal law enforcement agencies have largely abandoned their job of serving warrants in all but the most serious cases." Explaining how this situation came about, they write, "As arrests increased, jails became overcrowded. To cope, judges, instead of locking up suspects, often released them without bail with a promise to return for their next court date. For their part, police, rather than arrest minor offenders, issued citations and then released the suspects with the same expectation. When suspects failed to appear for their court dates, judges issued bench warrants instructing police to take the suspects into custody. But this caused the number of warrants to balloon, and the police did not have the time or staff to serve them all."[27]

III. The Matching Model with Multiple Treatments

Ideally, in a treatment evaluation we would like to identify two outcomes: one if the individual is treated, Y_T, and one if no treatment is administered, Y_{NT}. The effect of the treatment is then $Y_T - Y_{NT}$. But we cannot observe an individual in both states of the world, making a direct computation of $Y_T - Y_{NT}$ impossible.[28] All methods of evaluation, therefore, must make some assumptions about "comparable" individuals. An intuitive method is to match each treated individual with a statistically similar untreated individual and compare differences in outcomes across a series of matches. Thus, two statistical doppelgangers would function as the same individual in different treatments.

An important advantage of matching methods is that they do not require assumptions about functional form. When the research question is about a mean treatment effect, as it is here, matching methods also allow for an economy of presentation because they focus attention on the question of interest rather than on a long series of variables that are used only for control purposes. Unfortunately, matching methods typically founder between a rock and a hard place. The technique works best when individuals are matched across many variables, but as the number of variables increases, the number of distinct "types" increases exponentially, so the ability to find an exact match falls dramatically.

In an important paper, Paul Rosenbaum and Donald Rubin go a long way to surmounting this problem.[29] They show that if matching on X is valid, then so is matching on the probability of selection into a treatment conditional on X. The multidimensional problem of matching on X is thus trans-

[26] *Id.*

[27] *Id.*

[28] Rubin, Estimating Causal Effects of Treatments, *supra* note 4.

[29] Paul R. Rosenbaum & Donald B. Rubin, The Central Role of the Propensity Score in Observational Studies for Causal Effects, 70 Biometrika 41, 55 (1983).

formed into a single-dimension problem of matching on $\Pr(T = 1|X)$, where $T = 1$ denotes treatment.[30] The probability $\Pr(T = 1|X)$ is often called the propensity score, or p-score.

The matching technique extends naturally to applications with multiple treatments through the use of a multivalued propensity score with matching on conditional probabilities.[31] Assume that there are M mutually exclusive treatments, and let the outcome in each state be denoted Y_1, Y_2, and so forth. As before, we observe only a specific outcome but are interested in the counterfactual: what would the outcome have been if this person had been assigned to a different treatment? Rather than a single comparison, we are now interested in a series of pairwise comparisons between treatments m and l. The treatment effect on the treated is written

$$\theta_0^{m,l} = E(Y^m - Y^l|T = m) = E(Y^m|T = m) - E(Y^l|T = m), \qquad (1)$$

where $\theta_0^{m,l}$ denotes the effect of treatment m rather than l.

Identification of (1) can occur under appropriate conditions, the most important being that treatment outcomes are independent of treatment selection after conditioning on a vector of attributes, X (the conditional independence assumption). Formally,

$$Y^1 \ldots Y^M \perp T|X = x. \qquad (2)$$

If this assumption is valid, we can use the conditional propensity score to identify the treatment effect,[32]

$$\theta^{m,l} = E(Y^m|T = m) - E_{p^{m|ml}|m}[E(Y^l|p^{m|ml}(X),\ T = l)|T = m]. \qquad (3)$$

In practice, the conditional propensity score, $p^{m|ml}(x)$, is computed indirectly

[30] Matching methods are common among applied statisticians and natural scientists but have only recently been analyzed and applied by econometricians and economists. Papers on the econometric theory of matching include Heckman, Ichimura, & Todd, *supra* note 4; and Guido W. Imbens, The Role of the Propensity Score in Estimating Dose-Response Functions (Technical Working Paper No. 237, Nat'l Bur. Econ. Res. 1999). More applied work includes James J. Heckman, Hidehiko Ichimura, & Petra E. Todd, Matching as an Econometric Evaluation Estimator: Evidence from Evaluating a Job Training Program, 64 Rev. Econ. Stud. 605, 654 (1997); Dehejia & Wahba, *supra* note 4; Michael Lechner, Programme Heterogeneity and Propensity Score Matching: An Application to the Evaluation of Active Labour Market Policies (Contributed Paper No. 647, Econ. Soc'y World Congress 2000). Our multitreatment application is closest to that of Michael Lechner, Identification and Estimation of Causal Effects of Multiple Treatments under the Conditional Independence Assumption (Discussion Paper No. 91, IZA 1999).

[31] Lechner, Identification and Estimation of Causal Effects, *supra* note 30; Imbens, *supra* note 30.

[32] Lechner, Identification and Estimation of Causal Effects, *supra* note 30.

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from the marginal probabilities $p^l(x)$ and $p^m(x)$ estimated from a discrete-choice model. In this case,

$$E[p^{m|ml}(x)|p^l(x), p^m(x)] = E\left[\frac{p^m(x)}{p^l(x)+p^m(x)}|p^l(x), p^m(x)\right] = p^{m|ml}(x). \tag{4}$$

We use an ordered probit model (see further below) to generate propensity scores.

It is important to emphasize that the propensity scores are not of direct interest but rather are the metric by which members of the treated group are matched to members of the "untreated" group ("differently" treated in our context). After matching, and given the conditional independence assumption, the treated and untreated groups can be analyzed as if treatment had been assigned randomly. Thus, differences in mean FTA rates across matched samples are estimates of the effect of treatment.

Less formally, matching on propensity scores can be understood as a pragmatic method for balancing the covariates of the sample across the different treatments.[33] Note that the covariates that we care most about balancing are those that affect the treatment outcome. Assume, for example, that X influences treatment selection but does not independently influence treatment outcome. If the goal of the selection model were to consistently estimate the causes of treatment selection, we would want to include X in the model, but it is not necessarily desirable to include it when the purpose is to create a metric for use in matching.[34] A simple example occurs when X predicts treatment exactly. Inclusion of X would defeat the goal of matching because all propensity scores would be either zero or one. Similarly, we will include model variables in the propensity score that may affect the treatment outcome even if they do not casually affect treatment selection.

IV. Data and Descriptive Statistics

We use a data set compiled by the U.S. Department of Justice's Bureau of Justice Statistics called State Court Processing Statistics, for 1990, 1992, 1994, and 1996 (Inter-university Consortium for Political and Social Research [ICPSR] study 2038). We supplement these data with an earlier version of the same collection, the National Pretrial Reporting Program, for 1988–89 (ICPSR study 9508). The data are a random sample of 1 month of felony filings from approximately 40 jurisdictions, where the sample was designed to represent the 75 most populous U.S. counties. The data contain detailed information on arrest charges, criminal background of the defendant (for

[33] Dehejia & Wahba, *supra* note 4.

[34] Boris Augurzky & Christoph M. Schmidt, The Propensity Score: A Means to an End (Discussion Paper No. 271, IZA 2001).

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example, number of prior arrests), sex and age of the defendant,[35] release type (surety, cash bond, own recognizance, and so on), rearrest charges for those rearrested, whether the defendant failed to appear, and whether the defendant was still at large after 1 year, among other categories.

In addition to the main release types, there are minor variations. Some counties, for example, release on an unsecured bond for which the defendant pays no money to the court but is liable for the bail amount should he fail to appear. Because the incentive effects are very similar, we include unsecured bonds in the deposit bond category.[36] Instead of a pure cash bond, it is sometimes possible to put up property as collateral. Since property bonds are rare (588 observations in our data, less than 2 percent of all releases), we drop them from the analysis.[37] Finally, some counties may occasionally use some form of supervised release. In the first year of our data set, supervised release is included in the own-recognizance category. Supervised release often means something as simple as a weekly telephone check-in, so including these with own recognizance is reasonable. Supervised release is not a standard term, however, and other forms, such as mandatory daily attendance of a drug treatment program, are likely to be more binding. To maintain comparability across years, we follow the practice established in the first year of the data set by classifying supervised release with own recognizance. Because supervised release is more binding than pure own recognizance, this can only lower FTA rates and other results in the own-recognizance sample, thus biasing our results away from finding significant differences among treatments.[38]

In Table 1, the mean FTA rates for release categories are along the main diagonal, with the number of observations in square brackets. The preliminary analysis suggests that FTA rates are lower under surety bond release than under most other types of release. Off-diagonal elements are the difference between the FTA rate for the row category and the FTA rate for the column category. The FTA rate for those released under surety bond is 17 percent. Compared with surety release, the FTA rate is 3 percentage points higher under cash bonds, 4 percentage points higher under deposit bonds, and 9 percentage points higher under own recognizance (all these differences are

[35] The State Court Processing Statistics data are more complete and better organized than the National Pretrial Reporting Program data. The former, for example, include information on the race of the defendant that the latter do not.

[36] We drop observations missing data on the bail amount.

[37] Another reason to drop property bonds is that it is difficult to compare the bail for these releases to other release types. A defendant, for example, may put up a $250,000 house as collateral for $25,000 in bail. Although we know the bail amount, we do not know the value of the collateral property other than that it must, by law in many cases, be higher than the value of the bail amount. A cash or surety bond, therefore, is not equivalent to a property bond for the same bail amount.

[38] We find similar results by restricting the data set to the years in which supervised release is given a distinct category.

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TABLE 1

MEAN FAILURE-TO-APPEAR RATES BY RELEASE CATEGORY, 1988–96

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond	Emergency Release
Own recognizance	26 [20,944]	5**	6**	9**	−19**
Deposit bond		21 [3,605]	1	4**	−23**
Cash bond			20 [2,482]	3**	−25**
Surety bond				17 [9,198]	−28**
Emergency release					45 [584]

NOTE.—Mean failure-to-appear (FTA) rates (in %) for release categories, rounded to the nearest integer, are along the main diagonal, with the number of observations in square brackets. Off-diagonal elements are the difference between the mean FTA rate for the row category and the mean FTA rate for the column category.

** Statistically significant at the greater than 1% level.

statistically significant at greater than the 1 percent level). Put slightly differently, compared with surety release, the FTA rate is approximately 18 percent higher under cash bond, 33 percent higher under deposit bond, and more than 50 percent higher under own recognizance.

Table 1 also presents some information on emergency release. Emergency releasees are defendants who are released solely because of a court order to relieve prison overcrowding. Emergency release is not a treatment—the treatment is own recognizance—but rather an indication of what happens when neither judges nor bond dealers play their usual role in selecting defendants to be released.[39] One would expect that relative to those released under other categories, these defendants are likely to be accused of the most serious crimes, have the highest probability of being found guilty, and have the fewest community ties. In addition, these defendants have neither monetary incentive nor the threat of being recaptured by a bounty hunter to induce them to return to court. As a result, a whopping 45 percent of the defendants who are given emergency release fail to appear for trial. The large differences between the FTA rates of those released on emergency release and every other category indicate that substantial and successful selection occurs in the decision to release. Emergency release is thus of some special interest, although not directly related to the focus of this paper.

Although the preliminary data analysis is suggestive, the difference-in-means analysis could confound effects due to treatment with effects due to selection on, for example, defendant characteristics such as the alleged crime.

[39] Even under emergency release, some selection can occur. Judges and jailers, for example, could order that more inmates be paroled to make room for the most potentially dangerous accused defendants, inmates could be shipped out of state, or the court order could be (temporarily) ignored. The costs of selection, however, clearly rise substantially when jail space is tightly constrained.

V. Results

A. *Propensity Scores from Ordered Probit*

We generate propensity scores for matching using an ordered probit model. By law, judges must release defendants on the least restrictive conditions they believe are compatible with ensuring appearance at trial. Own recognizance, the least restrictive form of release, is our first category, followed by release on deposit bond. Although defendants released on deposit bond must put up some cash, which they will forfeit if they fail to appear, the amount is typically less than $500.[40] Few people are ever held because of a failure to raise cash for a deposit bond. Defendants who were offered financial release (but not a deposit bond) and who paid their bonds in cash are the third category of release. Cash bond is more expensive than a deposit bond but does not involve the monitoring of sureties. Defendants released via surety bond are the fourth category. Although the Constitution guarantees that excessive bail shall not be required, it does not require that bail should always be set low enough for a defendant to be able to afford release. Indeed, judges sometimes set bail in the expectation (and hope) that the defendant will not be able to raise bail. Thus, we include defendants held on bail or detained without bail as the final, most restrictive category, not released. Emergency releases are also included in the final category because, had it not been for the emergency, these individuals would have not have been released. From the ordered probit, we generate conditional propensity scores for each possible pairwise comparison.[41]

Variables in the ordered probit specification include individual-specific indicators that denote whether the defendant has been accused of murder, rape, robbery, assault, other violent crime, burglary, theft, other property offense, drug trafficking, other drug-related offense, or driving-related offense (with misdemeanors and other crimes in the constant). We also include variables for past experience with the criminal justice system. Three binary variables are set equal to one if the defendant had some active criminal justice status at the time of the arrest (for example, was on parole or probation), had prior felony arrests, or failed appear at trial in the past. The defendant's sex and age are also included. Note that these variables are exactly the sorts of variables that judges use to make treatment selection

[40] The median deposit bond amount is $5,000, and releasees typically must deposit 10 percent or less of the bond amount.

[41] We have also estimated the results using a multivariate logit model. The results are substantively similar (on the ordered probit model, see, for example, William H. Greene, Econometric Analysis (4th ed. 2000)).

decisions.[42] Other, nonindividual variables include the police clearance rate, defined as the number of arrests divided by the number of crimes per county. The clearance rate provides a crude measure of police availability that may affect FTA rates. County and year effects are included in the selection equation (county 29 and 1988 are excluded to prevent multicollinearity).[43] The results of the ordered probit estimation are presented in Appendix Table A1.

B. Matching Quality

A match is defined as the pair of observations with the smallest difference in propensity scores so long as the difference is less than a predefined caliper. If a match cannot be made within the caliper distance, the observations are dropped. We use matching with replacement, so the order of matching is irrelevant, and every untreated observation is compared against every treated observation.[44]

The match quality is good, as we match large proportions of the sample despite using a caliper of only .0001.[45] Figure 1*A* presents a box-and-whiskers plot of the propensity scores for each treatment category (including the "treatment" of not released) conditional on the actual treatment. The leftmost part of the graph, for example, gives the box-and-whiskers plot for the propensity of being in the own-recognizance, deposit, cash, surety, and not-released treatments for all defendants in the own-recognizance treatment.[46]

[42] Ayres & Waldfogel, *supra* note 6, identifies eight characteristics that judges may consider in setting bail: (1) the nature and circumstances of the offense (if relevant), (2) the evidence against the defendant, (3) the defendant's prior criminal record, (4) the defendant's prior FTA record, (5) the defendant's family ties, (6) the defendant's employment record, (7) the defendant's financial resources, and (8) the defendant's community ties. Although Ayers and Waldfogel's study deals only with Connecticut, the criteria are similar in other states.

[43] The use of county effects in the selection equation is noteworthy because it implies that matching will occur with "quasi"-fixed effects. A true fixed-effects estimator would require that comparable observations come from within the same county. The matching estimator takes into account county effects when seeking a match but does not insist that every match must be within county. In particular, some counties do not release on deposit bond, and others do not release on surety bond. A fixed-effects estimator would not use information from these counties in estimating the effect of the deposit and surety treatments. The matching estimator will use information from these counties if matching is strong on other variables. A pure fixed-effects estimator may also be important, however, and in the working version of this paper, Eric Helland & Alexander Tabarrok, Public versus Private Law Enforcement: Evidence from Bail Jumping (Working paper, George Mason Univ. 2003), we pursue this alternative approach. Results are consistent with those discussed here.

[44] Dehejia & Wahba, *supra* note 4, finds that matching with replacement is considerably superior to matching with nonreplacement.

[45] When matching on variables with fewer observations, such as fugitive rates conditional on failure to appear as we do below, we match using a caliper of .001. The caliper size makes little difference to the results.

[46] In a box-and-whiskers plot, the box contains the interquartile range (IQR): the observations between the 75th percentile (the top of the box) and the 25th percentile (the bottom of the box). The horizontal line toward the center of each box is the median observation. The whiskers are the so-called adjacent values that extend from the largest observation less than or equal

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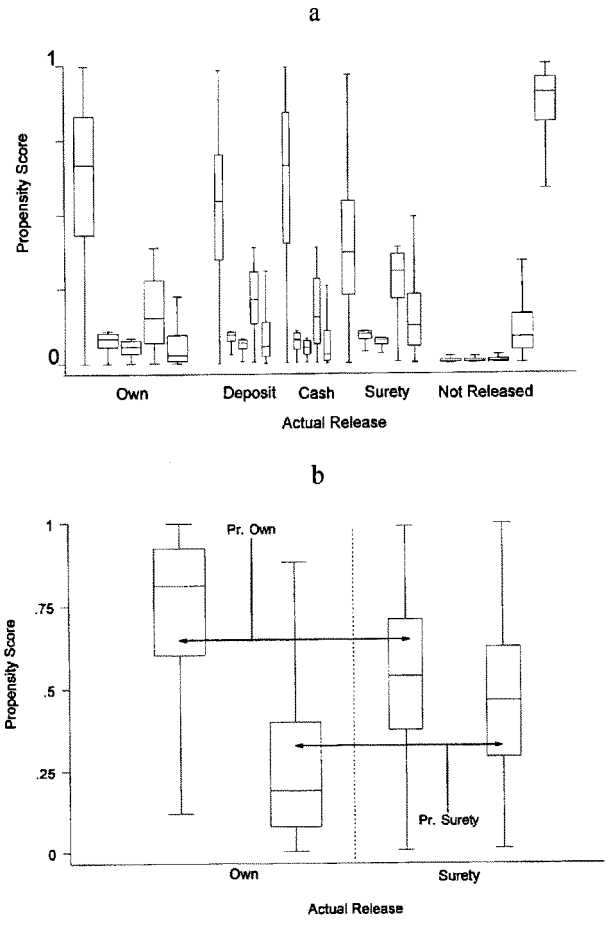

FIGURE 1.—*A*, *p*-score distribution for each release type conditional on actual release (the order within type is own recognizance, deposit, cash, surety, not released); *B*, pairwise *p*-score distributions for own recognizance versus surety.

Figure 1*B* gives the box-and-whiskers plot for the pairwise (conditional) probabilities for the own versus surety comparison. The "Pr. Own" and "Pr. Surety" arrows indicate that we can find comparable observations, statistical doppelgangers, for individuals released under either treatment. Many of the defendants released on surety bond, for example, were as likely to have been released on their own recognizance (third box from the left) as those who actually were released on their own recognizance (first box from the left). Similarly, many of the defendants who were released on their own recognizance were as likely to have been released on surety bond (second box from the left) as those who actually were released on surety bond (fourth box from the left). Note that it is important that the boxes overlap across treatments, not that they overlap within treatments—that is, the fact that in Figure 1*A* the propensity to be in the deposit bond treatment is everywhere lower than the propensity to be in the own-recognizance treatment simply reflects the fact that the deposit bond treatment is a low-probability event. More important is that the deposit bond treatment is a low-probability event regardless of actual treatment—we can thus find comparable observations across the treatments. Alternatively stated, the overlap in the boxes across treatments indicates that random factors play a large role in treatment selection, thus aiding our effort to find true comparable observations.[47]

Although we can find comparable observations across the release treatments, we cannot find good comparable observations for those who were not released. Indeed, the Figure 1*A* box-and-whiskers plot of the propensity not to be released among those who in fact were not released does not overlap at all with the propensity not to be released for those who were released. Defendants who are not released differ greatly from released defendants.[48] (This is consistent with the very high FTA rates that we found for emergency releasees in Table 1.) The fact that the model is capable of finding large selection effects if they exist, as they apparently do for those not released, bolsters the finding that selection on observable characteristics is not overly strong among the release treatments.

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to the 75th percentile plus 1.5 × IQR and the smallest observation greater than or equal to the 25th percentile minus 1.5 × IQR. Points outside the box and whiskers are called extreme values or outside points and for clarity are not plotted in this graph. In this plot, the width of the box is proportional to the square root of the number of observations in that category.

[47] Another interesting aspect of the box-and-whiskers plot is that it suggests that almost everyone can be released on their own recognizance, even those who might in another time and place be released only with high bail. Thirty percent of released defendants accused of murder, for example, were released on their own recognizance.

[48] It is possible to find defendants who were released who might not have been released—thus, the data are consistent with the adage that it is better to let 10 guilty men go free than jail one innocent man.

TABLE 2

TREATMENT EFFECTS OF ROW VERSUS COLUMN RELEASE CATEGORY ON FAILURE-TO-APPEAR RATES USING MATCHED SAMPLES, 1988–96

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond
Own recognizance	26	3.2** (1.0; 1.1)	4.8** (1.1; 1.2)	6.5** (.78; .78)
Deposit bond	−3.1** (1.1; 1.2)	21	4.1** (1.5; 1.6)	3.1** (1.1; 1.3)
Cash bond	−5.8** (1.3; 1.6)	−1.5 (1.6; 2.0)	20	1.8; 2.0 (1.4; 1.8)
Surety bond	−7.3** (.78; .89)	−3.9** (1.1; 1.2)	1.7 (1.3; 1.4)	17

NOTE.—Mean failure-to-appear rates (in %) for release categories for the full sample are along the main diagonal. Off-diagonal elements are the estimated treatment effects of the row category versus the column category. Standard errors are in parentheses—the first standard error assumes that the p-score is estimated with certainty; the second uses bootstrapping to estimate the standard error including uncertainty of the p-score. Matching caliper = .0001.

** Statistically significant at the greater than 1% level (two sided).

C. *Estimated Treatment Effects: Failure to Appear*

In Table 2, the row variable denotes the treated variable and the column the untreated variable.[49] For reference, the main diagonal includes the mean FTA rate in that category from the full sample.[50] Reading across the surety bond row, for example, we see the estimated difference in FTA rates caused by the surety treatment relative to the column treatment—that is, the estimate of the effect of treatment on the treated. The matching estimator suggests that similar individuals are 7.3 percentage points, or 28 percent, less likely to fail to appear when released on surety bond than when released on their own recognizance. Similar individuals are also 3.9 percentage points, or 18 percent, less likely to fail to appear when released on surety bond than when released on deposit bond. The estimated treatment effect for those on surety bonds versus cash is small and not statistically significant.[51]

[49] Two standard errors are presented in Table 2. The first takes into account uncertainty in the matched samples but assumes that the propensity score is known with certainty. The second estimate is a bootstrapped standard error that takes into account uncertainty that propagates from the estimation of the propensity score. The "regular" and bootstrapped standard errors are close, with the bootstrapped errors being approximately 8–20 percent higher. All the statistically significant results are significant at greater than the 1 percent level using either standard error. Since the estimation of the propensity score adds very little uncertainty to the matching estimators and because calculating bootstrapped errors is very time and resource intensive, we present only the regular standard errors in future results and leave adjustments to the reader. The bootstrapped errors were calculated using 100 replications of the model. The procedure took over 48 hours on a reasonably fast Pentium computer.

[50] The mean FTA rate for the full sample is included as rough guide to absolute effects. Note, however, that the matched sample is usually smaller than the full sample, so the mean FTA rate for the matched and full samples can be slightly different.

[51] As a test of matching quality, we also ran a linear regression on the matched samples that included surety bond and all the variables in Table 3. The results are similar, as they should be if the matched samples divide other covariates as if they were assigned randomly. The coefficient on surety bond in the surety versus own recognizance regression, for example, is

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Unlike Table 1, both the top and bottom halves of Table 2 are filled in; this is because the estimate of the treatment on the treated is conceptually different from the estimate of the treatment on the untreated (differently treated). For example, the effect of the surety treatment relative to own recognizance for those who were released on surety bond is not necessarily the exact opposite of the effect of own recognizance relative to surety bond on those who were released on their own recognizance. As it happens, however, our estimates of these effects are similar. The estimate of the effect of own recognizance relative to surety on those who were released on their own recognizance, for example, is 6.5 percentage points, similar in size but opposite in sign to the −7.3 surety effect relative to own recognizance of those who were released on surety bond. The similarities across diagonals suggest that either (or both) treatment selection or treatment effect does not interact strongly with defendant characteristics. One possible exception is that the deposit bond treatment relative to cash is estimated at 4.1 percentage points, while the cash bond treatment relative to deposit is estimated at −1.5 percentage points.

D. Estimated Treatment Effects: The Fugitive

A surprisingly large number of felony defendants who fail to appear remain at large after 1 year, approximately 30 percent. Alternatively stated, some 7 percent of all released felony defendants skip town and are not brought back to justice within 1 year. Those who remain at large more than 1 year are called fugitives.

The surety treatment differs most from other treatments when a defendant purposively skips town, because this is when bounty hunters enter the picture.[52] If the surety treatment works, therefore, we should see it most clearly in the apprehension of fugitives. Given that a defendant fails to appear, we ask what the probability is that the defendant is not brought to justice within 1 year and how this varies with release type. It is important to note that once a defendant has decided to abscond, there is no reason why anything other than the different effectiveness of public police and bail enforcement agents should have a systematic effect on the probability of being recaptured.

Table 3 provides strong evidence that bounty hunters are highly effective at recapturing defendants who attempt to flee justice—considerably more so than the public police. The main diagonal of Table 3 contains the mean fugitive rate conditional on FTA along with the number of observations in

−6.5, which is within 1 standard deviation of the −7.3 matching estimate. We do a more detailed comparison of linear regression and matching results further below.

[52] We use the term "bounty hunter" or "bail enforcement agent" to refer to private pursuers of felony defendants. Bond dealers typically pursue their own skips. Literal bounty hunters are typically not called in unless the skip is thought to have crossed state or international lines. Services like Wanted Alert (http://www.wantedalert.com) regularly post ads in *USA Today* that list fugitives and their bounties.

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TABLE 3

TREATMENT EFFECT OF ROW VERSUS COLUMN RELEASE CATEGORY ON THE FUGITIVE RATE USING MATCHED SAMPLES, CONDITIONAL ON FAILURE TO APPEAR, 1988–96

	Own Recognizance	Deposit Bond	Cash Bond	Surety Bond
Own recognizance	32 [5,440]	−3** (2.6)	−4.9** (2.9)	9.4** (2.1)
Deposit bond	−.2 (2.6)	33 [766]	−6.2 (4.1)	12.1** (2.7)
Cash bond	11.9** (3.0)	−3.8 (4.4)	40 [506]	18.6** (3.7)
Surety bond	−17** (2.0)	−15.5** (2.9)	−25.6** (4.2)	21 [1,537]

NOTE.—Mean fugitive rates (in %), defined as failures to appear that last longer than a year, for release categories for the full sample are along the main diagonal, with the number of observations in that category conditional on a failure to appear in square brackets. Off-diagonal elements are the difference between the mean fugitive rate for the row category and the mean fugitive rate for the column category estimated using matching. Standard errors are in parentheses. Matching caliper = .001.

** Statistically significant at the greater than 1% level (two sided).

each category. The estimated treatment effects for the row versus column variables are shown in the off-diagonals with standard errors in parentheses. The probability of remaining at large for more than a year conditional on an initial FTA is much lower for those released on surety bond. The surety treatment results in a fugitive rate that is lower by 17, 15.5, and 25.6 percentage points compared with the own-recognizance, deposit bond, and cash bond treatments, respectively. In percentage terms, the fugitive rates under surety release are 53, 47, and 64 percent lower than the fugitive rates under own recognizance, deposit bond, and cash bond, respectively. Similarly, the own recognizance, deposit, and cash bond treatments result in fugitive rates that are 29, 47, and 47 percent higher than under the surety treatment.

There are also some interesting nonsurety effects in Table 3. Note that the fugitive rate conditional on an FTA is higher for cash bond than for release on own recognizance. Earlier (see Table 2) we had found that the FTA rate was lower for cash bond than for release on own recognizance. This suggests that defendants on cash bond are less likely to fail to appear than those released on their own recognizance, but if they do fail to appear, they are less likely to be recaptured. The result is pleasingly intuitive. A defendant released on his own recognizance has little to lose from failing to appear and thus may fail to appear for trivial reasons. But a defendant released on cash bond has much to lose if he fails to appear, and thus those who do fail to appear do so with the goal of not being recaptured.

The propensity score method can be very informative about the entire distribution of treatment effects. In Figure 2, we graph smoothed (running-mean) FTA and fugitive rates against surety p-scores for the own-recognizance and surety treatments (conditional on being in either the surety or own-recognizance treatment). (We omit graphs for the other treatment comparisons for brevity.) The two downward-sloping, thinner curves graph smoothed FTA rates against the p-scores for those defendants released on

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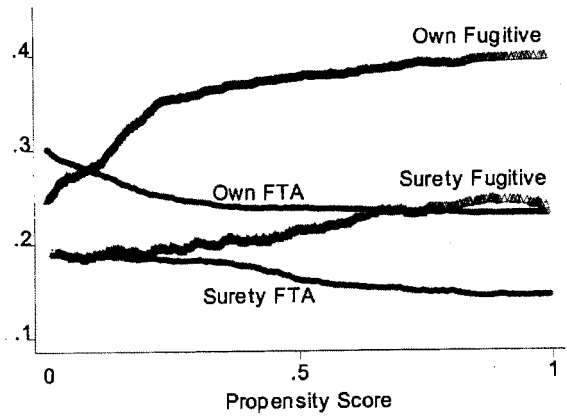

FIGURE 2.—Failure-to-appear and fugitive rates by own recognizance versus surety treatment plotted against *p*-scores.

their own recognizance or surety bond. The slope of each line indicates the direction and strength of the effect of observable characteristics on selection in that treatment. The difference between the own-recognizance and surety lines at any given propensity score is an estimate of the treatment effect, controlling for observable characteristics. The difference is roughly constant, which indicates that despite some mild selection, the treatment effect is roughly independent of observable characteristics.

For both the own-recognizance and surety treatments, FTA rates decrease as the propensity for being in the surety treatment increases. That is, FTA rates decrease as observable characteristics move in the direction of predicting surety release. The decline is gentle; moving from a near-zero propensity to a near-one propensity reduces the FTA rate by approximately 5 percentage points. The effect is sensible if we recall that many FTAs are short term—the defendant forgets the trial date or has another pressing engagement. These sorts of FTAs are likely to be more common for defendants with observable characteristics that predict low *p*-scores because judges release most defendants on their own recognizance and reserve surety release for defendants accused of more serious crimes. Few people will forget to show up for their murder trial, but some may do so if the trial involves a driving offense. At the same time, however, we expect that defendants accused of more serious crimes—who have more to lose from being found guilty—are more likely

to purposively abscond. If this is correct, we ought to see a positive correlation between the surety propensity score and the fugitive rate conditional on having failed to appear.

The two upward-sloping, thicker lines plot smoothed fugitive rates against the surety propensity score. As before, the slope of the plots gives the direction and strength of effects caused by selection on observable characteristics, and the vertical difference is the treatment effect for any given propensity score. As observable characteristics move in the direction of a greater propensity to be selected for surety release, the fugitive rate increases. It is interesting to note that the effect of selection on defendants released on surety bond is less than that on defendants released on their own recognizance (that is, the "slope" of the plot is less). This suggests that the surety treatment works well even for those defendants whose observable characteristics would predict higher FTA rates.

We examine the issue of unobservable characteristics at length below, but since selection by observable characteristics has little influence on fugitive rates, Figure 2 already suggests that observables would have to be very different from observables in order to greatly affect the results.

E. Kaplan-Meier Estimation of Failure-to-Appear Duration

The higher rate of recapture for those released on surety bond compared with other release types can be well illustrated with a survival function. For a subset of our data, just over 7,000 observations, we have information on the time from the failure to appear until recapture (return to the court). A survival function graphs the percentage of observations that survive at each time period. We estimate a survival function for each release type using the nonparametric Kaplan-Meier estimator. Typically, the Kaplan-Meier estimator is used only for preliminary analysis and is then followed by a parametric or semiparametric model. Although parametric and semiparametric models allow for covariates, they require sometimes tenuous assumptions about functional form. Instead, we follow our earlier approach of creating matched samples. Thus, using the same procedure, we create three matched samples: surety versus own recognizance, surety versus deposit, and surety versus cash. We then compare the survival function across each matched sample. The matching procedure ensures that covariates are balanced across the matched samples, so it is not necessary to include additional controls for covariates.

Figure 3 presents the survival functions. In each case, the survival function for those released on surety bond is markedly lower than that for those released on their own recognizance, deposit bond, or cash bond. The ability of bail enforcement agents relative to police to recapture defendants who

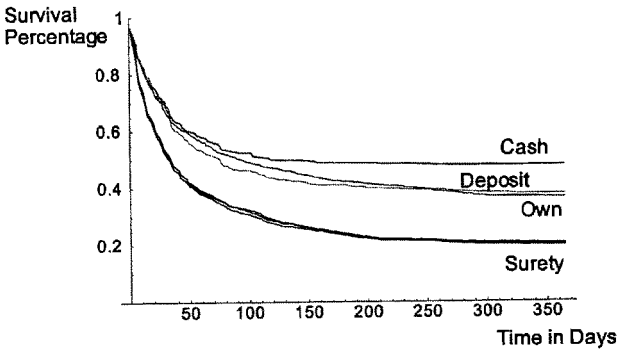

FIGURE 3.—Kaplan-Meier survival function for defendants on surety bond versus those released on cash bond or deposit bond or released on their own recognizance—using matched samples.

skip bail is evident within a week of the failure to appear.[53] By 200 days, the surety survival rate is some 20–30 percentage points, or 50 percent, lower than the survival rate for those out on cash bond, deposit bond, or their own recognizance; that is, the probability of being recaptured is some 50 percent higher for those released on surety bond relative to other releases. (Note that there are three surety bond survival functions, one for each comparison group, but these are nearly identical.)

A log-rank test confirms Figure 3; we can easily reject the null hypothesis of equality of the survivor functions—defendants released on surety bond are much more likely to be recaptured (that is, less likely to remain at large, or "survive") than those released on their own recognizance, deposit bond, or cash bond.[54]

[53] A number of estimates have been made that bounty hunters take into custody between 25,000 and 35,000 fugitives a year, depending on the year (see various sources in Drimmer, *supra* note 11; and also W. P. Barr, letter to Charles T. Canady on the Bounty Hunter Responsibility Act, NABIC Bull., March 2000). These figures are consistent with a recapture rate of over 95 percent and are consistent with the number of fugitives on surety bond. It appears, therefore, that almost all fugitives on surety bond are recaptured by bail enforcement agents and not by the police. Bounty hunters, however, will sometimes track down defendants and then tip police as to their whereabouts, so police will sometimes be involved in some aspects of recapture.

[54] The exact results of the log-rank test and similar results matching on propensity score and bail can be found in Helland & Tabarrok, *supra* note 43.

TABLE 4

EFFECT OF ALTERNATIVE TREATMENT VERSUS SURETY BOND ON FAILURE-TO-APPEAR AND FUGITIVE RATES (Conditional on Failure to Appear), 1988–96

	Own Recognizance versus Surety Bond	Deposit versus Surety Bond	Cash versus Surety Bond
Treatment effect on failure-to-appear rates	+7.8** (1.6)	+6.2** (1.8)	−1.6 (4.4)
Treatment effect on fugitive rates	+14.8** (2.3)	+19.8** (2.9)	+35.7** (8.0)

NOTE.—Individuals from states that have banned surety bonds are matched with similar individuals released on surety bond. Standard errors are in parentheses. The matching caliper is .0001.

** Statistically significant at the greater than 1% level (two sided).

F. Comparison with Counties in States That Have Banned Commercial Bail

Some states have banned commercial bail. It seems plausible that matching can find two individuals who are comparable but for the fact that one individual could not have been assigned surety bail while the other could and was assigned surety bail. Comparing these individuals gives us a measure of what would happen if a county lifted its ban on commercial bail.[55]

Table 4 demonstrates that states that ban commercial bail pay a high price. We estimate that FTA rates are 7–8 percentage points, or approximately 30 percent, higher for individuals released on deposit or own recognizance than if the same individuals were released on surety bond.[56] As before, we find that cash bond is about as effective as surety bond at controlling FTA rates. The fugitive rate conditional on FTA is much higher under own recognizance, deposit, or cash release than under surety—higher by some 15, 20, and 36 percentage points, or 78, 85, and 93 percent, respectively—figures even larger than we found earlier.

VI. LOOKING FOR UNOBSERVABLE VARIABLES

Matching is a powerful and flexible tool, but it is not a research design that magically guarantees the identification of causal effects. In this section, we test for robustness and attempt to rule out the potentially confounding effects of unobservable characteristics. We focus on two identification strat-

[55] Since we are interested in the cross-county variation, the propensity scores for these tests were generated from an ordered probit that did not include county fixed effects but was otherwise identical to that used earlier.

[56] Note that in Table 4, we examine the treatment effect of own recognizance, deposit, and cash relative to surety because this is the relevant comparison when considering the experiment of lifting the ban on commercial bail. As noted earlier, the treatment effect on the treated and untreated groups are similar, so we could also have examined the surety treatment effect relative to the alternative release types.

TABLE 5

MEAN REARREST RATES BY RELEASE CATEGORY, 1988–96

	Rate (%)	*N*
Own recognizance	14.9	20,945
Deposit bond	13.3	3,605
Cash bond	14	2,482
Surety bond	12	9,202

egies; a number of alternative strategies, described briefly below, are developed in the working paper.

Our first identification strategy takes advantage of the fact that some 14 percent of defendants out on pretrial release are arrested for another crime before they are sentenced for the first crime. It is plausible that the probability of being rearrested is positively correlated with the probability of becoming a fugitive. Assume, for example, that guilty defendants are less likely to show up for trial than innocent defendants and that innocent defendants are less likely to be rearrested than guilty defendants. There is good evidence for some such assumption because in the raw data, defendants who are never rearrested have an FTA rate of 11 percent, but defendants who are rearrested for another crime have an FTA rate of 43 percent.

If rearrest is positively correlated with the probability of becoming a fugitive and if treatment does not influence rearrest rates, then rearrest rates by treatment will track unobserved characteristics. Table 5 provides evidence for the second clause—in the raw data, there is very little variation in rearrest rates across treatment categories.[57] Thus, Table 6 (matching on propensity score and bail) presents faux "treatment effects" for the effect of various release types on rearrest rates. We emphasize that our hypothesis is that treatment does not influence rearrest—the faux treatment effects, therefore, are indications of the influence of unobserved variables.

In Table 6, the surety versus own recognizance and surety versus deposit comparisons show positive but very small and statistically insignificant effects, which suggests that unobserved variables have little influence on FTA and fugitive rates across these comparisons. The surety versus cash bond comparison suggests that the surety treatment increases rearrest rates by 4.5 percentage points, which implies that unobserved variables operate in a direction that offsets the true treatment effect of surety on FTA and fugitive

[57] In the raw data, there appears to be a slight decrease in rearrest rates for those released on commercial bail. Although the rearrest of a defendant is not usually grounds for the forfeiture of the bond dealer's bond, bond dealers do monitor their charges, and such monitoring might reduce rearrest rates. Bond dealers might be also be able to select defendants who are unlikely to flee and thus also unlikely to be rearrested. Once we control for observable characteristics, however, the slight decrease in arrest rates for those on commercial bail disappears and in some cases reverses (see Table 6).

TABLE 6

EFFECT OF SURETY TREATMENT EFFECT VERSUS OTHER RELEASE TYPES ON REARREST RATES USING SAMPLES MATCHED ON *p*-SCORE AND BAIL, 1988–96

	Surety versus Own Recognizance	Surety versus Deposit Bond	Surety versus Cash Bond
Surety bond	.7 (.6)	.58 (1.0)	4.5** (1.3)
Matched observations	14,925	9,740	7,064

NOTE.—The matching caliper is .001.
** Statistically significant at the greater than 1% level (two sided).

rates. Recall from Table 2 that we found that FTA rates were slightly higher under surety than under the cash bond treatment. The evidence from rearrest rates suggests that unobservable characteristics may be responsible for part of this and that the true treatment effect is somewhat lower. Similarly, although we found large negative effects on fugitive rates from the surety treatment (relative to cash treament), the evidence suggests that, if anything, the true treatment effects are even more negative.[58]

The rearrest data allow for another interesting comparison. For a small subset of our data, 1,331 observations from 1988 and 1990, we know the rerelease type for those individuals who are arrested and released on a second charge. We do not know whether the individual failed to appear on the second charge, which is why we do not have repeated observations. Nevertheless, the second arrest and release data may be revealing.

Suppose that the initial release is own recognizance and the second release is via surety bond. By monitoring and possibly recapturing the defendant if he skips on the second trial, bail bondsmen and their agents create a positive externality with respect to fugitive rates on the first trial. This potential externality means that we need not compare own-recognizance to surety releases to measure a surety treatment effect. Instead, we can compare defendants released on their own recognizance with other defendants released on their own recognizance in their first release and on surety bond in their second release. Similarly, we can compare fugitive rates on the first trial for defendants whose first and second releases were own recognizance and own recognizance with those whose first and second releases were own recognizance and surety bond. With this comparison, we control for selection effects on the first release.

The unconditional fugitive rate of defendants who are released on their

[58] Since we find that rearrest rates vary little by treatment category, we should also find that treatment effects measured in the rearrest sample, that is, using only those defendants who were subsequently arrested for a second crime, should be similar to those found in the one-arrest sample. We have run these matching tests on propensity score and bail and do find similar results, which we omit for brevity.

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TABLE 7

UNCONDITIONAL FUGITIVE RATES BY ARREST-REARREST CATEGORY, 1988, 1990

Category	Rate
1. Own and not rearrested	8.48 [17,828]
2. Own-own	8.04 [191]
3. Own-surety	1.49 [134]
4. t-test (row 1 − row 3)	2.9; $p(1 > 3 = .0019)$
5. t-test (row 2 − row 3)	2.6; $p(2 > 3 = .0047)$

NOTE.—Own-own indicates first release on own recognizance and second release on own recognizance. Own-surety indicates first release on own recognizance and second release on surety bond.

own recognizance and not rearrested is 8.48 percent.[59] The fugitive rate of defendants who are released on their own recognizance and who are rearrested and then released again on their own recognizance is almost identical, 8.04 percent. But the fugitive rate for those defendants initially released on their own recognizance but then rearrested and rereleased on surety bond is just 1.9 percent. The difference between the own-recognizance and the own-recognizance+surety fugitive rate is statistically significant at the greater than 1 percent level. The difference between the own-recognizance+own-recognizance and own-recognizance+surety rate, which controls for rearrest, is also statistically significant at the greater than 1 percent level. Table 7 summarizes.

In the working paper,[60] we supplement the above analysis in a variety of ways to control for county effects, individual effects observed by judges but unobserved by us, and pure unobserved effects of a very general nature. [61] Most generally, the cream that judges skim are released on their own recognizance and deposit bond, while the skim are released on cash or surety bond. Consistent with this, observable selection effects on fugitive rates are positive, and the evidence from a variety of independent tests suggests that unobservable characteristics are not biasing our results upward. Taken to-

[59] Earlier we focused on fugitive rates conditional on having FTA. We focus on unconditional fugitive rates here because we have fewer observations. We have data on rearrest and rerelease type for 1988 and 1990.

[60] Helland & Tabarrok, *supra* note 43.

[61] One of our supplementary tests is a completely independent test using instrumental variables. When jails become overcrowded, judges are pressured to release individuals on their own recognizance rather than run the risk of setting a bail amount that the defendant might not be able to secure. (We present evidence in the working paper that bond dealers understand that overcrowded jails mean less surety business.) We define Ratio as the county jail population divided by the official jail capacity. A value of Ratio greater than one indicates overcrowding. We suggest that jail overcrowding is not likely to be correlated with unobservables that affect FTA and fugitive rates. Using Ratio as an instrumental variable, we again find that surety bail significantly reduces fugitive rates. For details, see Helland & Tabarrok, *supra* note 43.

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gether, the evidence suggests that we have good estimates that surety release reduces FTA rates, survival times, and fugitive rates.

VII. Conclusions

When the default was for every criminal defendant to be held until trial, it was easy to support the institution of surety bail. Surety bail increased the number of releases relative to the default and thereby spared the innocent some jail time. Surety release also provided good, albeit not perfect, assurance that the defendant would later appear to stand trial. When the default is that every defendant is released, or at least when many people believe that "innocent until proven guilty" establishes that release before trial is the ideal, support for the surety bail system becomes more complex. How should the probability of failing to appear and all the costs this implies, including higher crime rates, be traded off against the injustice of imprisoning the innocent or even the injustice of imprisoning the not-yet-proven guilty? We cannot provide an answer to this question, but we can provide a necessary input to this important debate.

Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time. Deposit bonds perform only marginally better than release on own recognizance. Requiring defendants to pay their bonds in cash can reduce the FTA rate similar to that for those released on surety bond. Given that a defendant skips town, however, the probability of recapture is much higher for those defendants released on surety bond. As a result, the probability of being a fugitive is 64 percent lower for those released on surety bond compared with those released on cash bond. These finding indicate that bond dealers and bail enforcement agents (bounty hunters) are effective at discouraging flight and at recapturing defendants. Bounty hunters, not public police, appear to be the true long arms of the law.

APPENDIX

TABLE A1

ORDERED PROBIT ON STRINGENCY OF RELEASE

Variable	Coefficient	
Local conditions:		
Time, in days, to scheduled start of trial	−.5821	(.0038)
Local clearance rate (total arrest/total crime)	.3957	(.1799)
Defendant is charged with:		
Murder	.35915**	(.051044)
Rape	.376661**	(.032135)
Robbery	.146899**	(.028193)
Assault	.208538**	(.039397)
Other violent crime	.048705+	(.02932)
Burglary	−.10109**	(.027554)
Theft	−.16676**	(.029142)
Other property crime	.212824**	(.026824)
Drug trafficking	−.1147**	(.027033)
Other drug crime	−.01139	(.041254)
Driving-related crime	−.18755**	(.016514)
Defendant characteristics:		
Age	.000854	(.000653)
Female (yes = 1)	.873055**	(.080055)
Active criminal justice status	.191588**	(.013974)
Previous felonies	.244761**	(.013558)
Previous failure to appear	.123918**	(.015137)

NOTE.—The model includes county and year effects (not shown). Asymptotic standard errors are in parentheses. There are 58,585 observations.

+ Statistically significant at the greater than 10% level.

** Statistically significant at the greater than 1% level (two-sided test).

BIBLIOGRAPHY

American Bar Association. *Criminal Justice Standards.* Washington, D.C.: American Bar Association, 1985.

Augurzky, Boris, and Schmidt, Christoph M. "The Propensity Score: A Means to an End." IZA Discussion Paper No. 271. Bonn: IZA, March 2001.

Ayres, Ian, and Waldfogel, Joel. "A Market Test for Discrimination in Bail Setting." *Stanford Law Review* 46 (1994): 987–1047.

Burton, Bob. *Bail Enforcer: The Advanced Bounty Hunter.* Boulder, Colo.: Paladin Press, 1990.

Chamberlin, John A. "Bounty Hunters: Can the Criminal Justice System Live without Them?" *University of Illinois Law Review* (1998): 1175–1205.

Clarke, Stevens H.; Freeman, Jean L.; and Koch, Gary G. "Bail Risk: A Multivariate Analysis." *Journal of Legal Studies* 5 (1976): 341–85.

Clines, Francis X. 2001. "Baltimore Gladly Breaks 10-Year Homicide Streak." *New York Times,* January 3, 2001.

DEF02630

Dehejia, Rajeev H., and Wahba, Sadek. "Causal Effects in Non-experimental Studies: Re-evaluating the Evaluation of Training Programs." Working Paper No. 6586. Cambridge, Mass.: National Bureau of Economic Research, June 1998.

Drimmer, Jonathan. "When Man Hunts Man: The Rights and Duties of Bounty Hunters in the American Criminal Justice System." *Houston Law Review* 33 (1996): 731–93.

Feeney, Floyd. "Foreword." Pages ix–xiii in *Bail Reform in America*, edited by Wayne H. Thomas, Jr. Berkeley: University of California Press, 1976.

Freed, Daniel J., and Wald, Patricia M. *Bail in the United States: 1964.* Washington, D.C.: National Conference on Bail and Criminal Justice, 1964.

Goldkamp, John S., and Gottfredson, Michael R. *Policy Guidelines for Bail: An Experiment in Court Reform.* Philadelphia: Temple University Press, 1985.

Greene, William H. *Econometric Analysis.* 4th ed. Upper Saddle River, N.J.: Prentice Hall, 2000.

Heckman, James J.; Ichimura, Hidehiko; and Todd, Petra E. "Matching as an Econometric Evaluation Estimator: Evidence from Evaluating a Job Training Programme." *Review of Economic Studies* 64 (1997): 605–54.

Heckman, James J.; Ichimura, Hidehiko; and Todd, Petra. "Matching As an Econometric Evaluation Estimator." *Review of Economic Studies* 65 (1998): 261–94.

Helland, Eric, and Tabarrok, Alexander. "Public versus Private Law Enforcement: Evidence from Bail Jumping." Working paper. Fairfax, Va.: George Mason University, 2003. http://mason.gmu.edu/~atabarro/PublicvsPrivate.pdf.

Howe, Kenneth. "Massachusetts Undertakes Sweeping Reform of Its Warrants System." *San Francisco Chronicle,* June 23, 1999.

Howe, Kenneth, and Hallissy, Erin. "When Justice Goes Unserved: Thousands Wanted on Outstanding Warrants—but Law Enforcement Largely Ignores Them." *San Francisco Chronicle,* June 22, 1999.

Imbens, Guido W. "The Role of the Propensity Score in Estimating Dose-Response Functions." Technical Working Paper No. 237. Cambridge, Mass.: National Bureau of Economic Research, April 1999.

Kennedy, Spurgeon, and Henry, D. Alan. "Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision." Washington, D.C.: Pretrial Services Resource Center, 1997.

Kimbrough, Carla J. "Crowded Jails Put Squeeze on Bondsmen." *Arkansas Democrat-Gazette,* June 7, 1989.

Landes, William M. "The Bail System: An Economic Approach." *Journal of Legal Studies* 2 (1973): 79–105.

Landes, William M. "Legality and Reality: Some Evidence on Criminal Procedure." *Journal of Legal Studies* 3 (1974): 287–337.

Lechner, Michael. "Identification and Estimation of Causal Effects of Mul-

DEF02631

tiple Treatments under the Conditional Independence Assumption." IZA Discussion Paper No. 971. Bonn: IZA, December 1999.

Lechner, Michael. "Programme Heterogeneity and Propensity Score Matching: An Application to the Evaluation of Active Labour Market Policies." Econometric Society World Congress 2000 Contributed Paper No. 647. St. Gallen: University of St. Gallen, Swiss Institute for International Economics and Applied Economic Research, 2000.

Lecky, George. "Police Name '200 Most Wanted.'" *Cincinnati Post,* September 5, 1997.

Lee, Henry K., and Howe, Kenneth. "Plan to Clear Backlog of Warrants: Santa Clara County Offering Amnesty to Some." *San Francisco Chronicle,* January 12, 2000.

Leuven, Edwin, and Sianesi, Barbara. "PSMATCH2: Stata Module to Perform Full Mahalanobis and Propensity Score Matching, Common Support Graphing, and Covariate Imbalance Testing." Statistical Software Components, No. S432001. Boston: Boston College, Department of Economics, 2003. http://ideas.repec.org/c/boc/bocode/s432001.html.

Myers, Samuel L., Jr. "The Economics of Bail Jumping." *Journal of Legal Studies* 10 (1981): 381–96.

National Association of Pretrial Service Agencies. *Performance Standards and Goals for Pretrial Release.*" 2d ed. Wauwatosa, Wis.: National Association of Pretrial Service Agencies, September 1998.

Prendergast, Jane. "Warrant Amnesty Offered for 1 Day." *Cincinnati Enquirer,* November 19, 1999.

Reynolds, Morgan. "Privatizing Probation and Parole." Pages 117–28 in *Entrepreneurial Economics: Bright Ideas from the Dismal Science,* edited by Alexander Tabarrok. New York: Oxford University Press, 2002.

Romano, Jay. "Defendants Increasingly Skip Bail." *New York Times,* December 22, 1991.

Rosenbaum, Paul R., and Rubin, Donald B. "The Central Role of the Propensity Score in Observational Studies for Causal Effects." *Biometrika* 70 (1983): 41–55.

Rosenbaum, Paul R., and Rubin, Donald B. "Reducing Bias in Observation Studies Using Subclassification on the Propensity Score." *Journal of the American Statistical Association* 79 (1984): 516–24.

Rubin, Donald B. "Estimating Causal Effects of Treatments in Randomized and Nonrandomized Studies." *Journal of Educational Psychology* 66 (1974): 688–701.

Rubin, Donald B. "Assignment to Treatment Group on the Basis of a Covariate." *Journal of Educational Statistics* 2 (1977): 1–26.

Thomas, Wayne H., Jr. *Bail Reform in America.* Berkeley: University of California Press, 1976.

Toborg, Mary A. "Bail Bondsmen and Criminal Courts." *Justice System Journal* 8 (1983): 141–56.

DEF02632

U.S. Department of Justice, Bureau of Justice Statistics. "Felony Defendants in Large Urban Counties, 1996." Washington, D.C.: Bureau of Justice Statistics, 1999. http://www.ojp.usdoj.gov/bjs/pub/pdf/fdluc96.pdf.

Due to publishing constraints, Exhibit # 2001, a CD of 1986 bail bonds, is only available for Senators to review. Exhibits # 2002, 2003, and 2004 are excerpts of the data of this CD.

Ames, Edwin J.
9-9-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24 IH JUDICIAL COURT

EDWIN. J. AMES
(NAME)
Of 736 HARMONY ST. NOLA
(STREET ADDRESS) CITY STATE
Having been arrested for the crime(s) of: 14-67(B) THEFT SHOPLIFTING
and having been admitted to bail in the sum of FIFTEEN HUNDRED Dollars
($ 1500 00) by order of the Hon. JUDGE PORTEOUS Judge of the
24 TH JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. C5959-A
COMPLAINT NO. I-5840-86
DATE
DEPOSIT NO.
DATE OF BIRTH 3-30-48
ARREST DATE 9-9-86 PLACE 4400 VETERANS
RELEASE DATE 9-9-86 PLACE JPSO

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICE SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIFTEEN HUNDRED Dollars ($ 1500 00) after said bail has been forfeited in accordance with the law.

FILED FOR RECORD
SEP 12 1986
CLERK OF COURT
PARISH OF JEFFERSON
LOUISIANA

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($ _____); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24 IH JUDICIAL COURT ON THE
10 DAY OF NOTIFIED, 19 ___ AT _____ A.M.

DEFENDANT

736 Harmony ST N.O.L.A.
ADDRESS

Verbal order of Hon. JUDGE PORTEOUS Judge,
24TH JUDICIAL Court, received by DEPUTY on
9-9-86 at 4:40pm
Sme on Sme at Sme

RECEIVED
INTERDICTION PAGING
SHERIFF'S OFFICE
DEPUTY SHERIFF

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

002002

Form No. B-002
Rev. 5-77

Bailey Paul 9-14-86

STATE OF LOUISIANA 0 9 1 6 8 6 0 1 7 8 9 24th Judicial COURT
PARISH OF JEFFERSON

PERSONAL SURETY BAIL UNDERTAKING

Paul Bailey having been arrested for the crime of
14:94.37

and having been admitted to bail in the sum of Twenty three hundred fifty Dollars ($2350.00) by order of the Hon. Judge Patterson, Judge of the 24th Judicial Court for the Parish of Jefferson,

I, HENRY L. BAILEY of Box 465 NWY 301 BARATARIA, LA

I, _____ of _____

hereby undertake that the above named Paul Bailey will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Twenty three hundred fifty Dollars ($2350.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF To BE NOTIFIED 19 AT _____ A.M.

BOND NO. 106033-D
COMPLAINT NO. I-9648-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 11-3-49
ARREST DATE 9-14-86 PLACE Lafitte
RELEASE DATE 9-14-86 PLACE JCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Paul Bailey
X _____ DEFENDANT
Box 465
X Barataria, La 70036
ADDRESS

SURETY
ADDRESS

SURETY
Box 465 NWY 301
BARATARIA, LA
ADDRESS

Phone 689-4410

Verbal order of Hon. Judge Patterson Judge, 24th Judicial Court, received by Dep. E. Hall on 9-14-86 at 10:45 AM, and verified by Same on Same at _____

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Form No. B-002
Rev. 5-77

Bourgeois Kirk M
9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTIRCT COURT

PERSONAL SURETY BAIL UNDERTAKING

KERK M. BOURGEOIS having been arrested for the crime of CRIMINAL DAMAGE, CRIMINAL DAMAGE.

and having been admitted to bail in the sum of **TWO-THOUSAND-SEVEN-HUNDRED-FIFTY** Dollars ($ 2,750.00) by order of the Hon. JD. T. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, JOHEPH S BOURGEOIS of BOX 299 ANTHONY ST #17 BARATARIA, LOUISIANA

I, of

hereby undertake that the above named KIRK M. BOURGEOIS will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **TWO-THOUSAND-SEVEN-hundred FIFTY** Dollars ($ 2,750.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE DAY OF , 19 AT A.M.

** TO BE NOTIFIED**

BOND NO. 1059350

COMPLAINT NO. I0680 86

DATE

DEPOSIT NO.

DATE OF BIRTH 05-29-57 W/M

ARREST DATE 9-11-86 PLACE W. BNAK

RELEASE DATE 9-11-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

X Kirk Bourgeois
DEFENDANT

By 429-EE Barataria, La.
ADDRESS

689-3818
SURETY

ADDRESS

X Joseph J Bourgeois
SURETY

X Bof 299 Barataria La 70036
ADDRESS

Phone # 689-7966

FILED FOR RECORD
SEP 12 3 04 PM '86
DY. CLERK, PARISH OF JEFFERSON, LA.

Verbal order of Hon. JD. V. WILTY Judge, R.O.R. JUSTICE OF THE PEACE Court, received by DEP. R. DUCOMBS on at , and verified by on at .

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Deputy R. Ducombs
DEPUTY SHERIFF

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Form No. B-002
Rev 5-77

Bail Matter, Lueveve
9-4-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Berkhalter, Lueveve R. having been arrested for the crime of R.S. 14-67.F

and having been admitted to bail in the sum of Fifteen Hundred Dollars ($ 1500.00) by order of the Hon. Judge Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson.

I, Berkhalter, Brenda of 164 Bishop Drive - Avondale, LA.

I, _____ of _____

hereby undertake that the above named Berkhalter, Lueveve will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Fifteen Hundred Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE To be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 65943-A
COMPLAINT NO. I-5040-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 12-21-40
ARREST DATE 9-8-86 PLACE 4500 Blk. Vets. Blvd.
RELEASE DATE 9-8-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Lueveve Berkhalter
DEFENDANT
164 Bishop Avondale 70094
ADDRESS
Berkhalter
SURETY
164 Bishop Drive Avondale 70094
ADDRESS
SURETY
ADDRESS

FILED FOR RECORD
SEP 12 3 16 PM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. Judge Porteous Judge, 24th Judicial Court, received by Deputy A.H. Bourque on 09-08-86 at 3:35 P.M., and verified by SAME on SAME at SAME

Deputy C. 21 Bourque
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
SEP 1986
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

Crockett Juan
9-14-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

0216060 1797

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Juan Crockett
14:62.2 having been arrested for the crime of

and having been admitted to bail in the sum of Thirty five hundred
Dollars ($ 3500.00) by order of the Hon. Judge Perteuil, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, DAVID P. CROCKETT of 733 JACKSON AVE. Apt. A. NO, LA
I, of
hereby undertake that the above named Juan Crockett
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court, and that if he fails to perform any of these conditions, I will pay this Court the sum of Thirty five hundred
Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE DAY OF 19 AT A.M.
TO BE NOTIFIED

BOND NO. 106-034-D
COMPLAINT NO. I-9138-81
DATE
DEPOSIT NO.
DATE OF BIRTH 10-20-57
ARREST DATE 9-14-86 PLACE Westwego
RELEASE DATE 9-14-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Juan Crockett
DEFENDANT
X 9452 E Jailhouse Pkwy
ADDRESS
Westwego La. 70094
SURETY

ADDRESS
X David Crockett
SURETY
X 731 Jackson ave
ADDRESS
NEW ORLEANS, LA
PHONE 568-1039

Verbal order of Hon. Judge Perteuil, Judge,
24th Judicial Court, received by Dep E Stell on
9-14-86 at 10:45 AM, and verified by
Same on Same at .

Dep. E Stell
DEPUTY SHERIFF

CLERK OF COURT

FILED FOR RECORD
86 SEP 15 AM 8:30
CLERK OF COURT
JEFFERSON PARISH, LA.

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Campbell Jerome 9-11-86

Rev 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

I, CAMPBELL, JEROME
(NAME)
of 1920 CHARLESTON DRIVE MARRERO, La.
(STREET ADDRESS) CITY STATE
Having been arrested for the crime(s) of: 14:34
and having been admitted to bail in the sum of two thousand Dollars
($2000.00) by order of the Hon. Judge of the
24th JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105929D
COMPLAINT NO. I0114886
DATE 9-11-86
DEPOSIT NO.
DATE OF BIRTH 7-16-62
ARREST DATE 9-2-86 PLACE 3rd
RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of two thousand Dollars ($2000.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($ _____); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

FILED FOR RECORD SEP 12 3 14 PM 1986 BY CLERK PARISH OF JEFFERSON LOUISIANA

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M.

TO BE NOTIFIED

Jerome Campbell
DEFENDANT
Ph- 347-8216

1920 Charleston
ADDRESS

Verbal order of Hon. PORTEOUS, Judge,
24th JUDICIAL Court, received by DEPUTY N. MELERINE on
9-11-86 at 9:00 AM, and rescheduled
on _____ at _____

SEP 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

Karla Smith
DEPUTY SHERIFF

JPSD 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. 8-002
Rev. 5-77

Carrington allegedly 9-12-86

STATE OF LOUISIANA 8601794 24th JUDICIAL COURT
PARISH OF JEFFERSON

PERSONAL SURETY BAIL UNDERTAKING

Deborah A Carrington having been arrested for the crime of RS14 67(B)

and having been admitted to bail in the sum of Two Thousand Dollars ($ 2000.00) by order of the Hon. Porteus, Judge of the 24th Judicial Court for the Parish of Jefferson,
I, Charles L Stabile of 3325 Charles Dr. Chalmette, La
I, _____ of _____
hereby undertake that the above named Deborah A Carrington
will appear at all stages of the proceedings in the 24th JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Two Thousand Dollars ($ 2000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON THE XX DAY OF XXXXX, 19 XX AT XXX A.M.
TO BE NOTIFIED

BOND NO. 105987-D
COMPLAINT NO. F07864-86
DATE
DEPOSIT NO.
DATE OF BIRTH 12-26-59
ARREST DATE 9-12-86 PLACE W.B
RELEASE DATE 9-12-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X D A Carrington
DEFENDANT
X 4020 Hessmer Ave
ADDRESS
Met. LA 70002 MERIA T.
SURETY
ADDRESS
X Charles L Stabile
SURETY
X 3305 Campagna Dr.
Chal. La. 70043
ADDRESS
PHON 279-3418

Verbal order of Hon. Porteus Judge, 24th Judicial Court, received by _____ on 9-12-86 at 8:15 pm, and verified by _____ at _____.

SEP 16 9 FILED

DEPUTY SHERIFF

SEP 1986 RECEIVED DEFENDER-PAROLE SHERIFF'S OFFICE

CLERK OF COURT

Form No. B-002
Rev. 5-77

Campbell James
9-13-96

0916060179 0

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

James Campbell having been arrested for the crime of RS 14:62.3, 35

and having been admitted to bail in the sum of Ten Thousand Two Hundred Fifty Dollars ($ 10,250.00) by order of the Hon. Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson,

I, JANET ZARR of 113 Carnation Ave, Metairie

I, _____ of _____

hereby undertake that the above named James Campbell will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Ten Thousand Two Hundred Fifty Dollars ($ 10,250.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF To Be Notified!, 19____ AT _____ A.M.

BOND NO. 106008 D

COMPLAINT NO. I 682486

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 1/31/47

ARREST DATE 9/10/96 PLACE E/B

RELEASE DATE 9/13/96 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

James A Campbell Jr
DEFENDANT

2140 Colorado Ave Kenner.
ADDRESS
466-9162- 887-5568

SURETY

ADDRESS

Janet Zarr
SURETY

113 Carnation Ave apt H
ADDRESS
Met LA. 70001
ph # 887-5566

98 SEP 9 AM 8:49
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. Porteous Judge, 24th Judicial Court, received by Dep E Stull on 9/13/96 at 10:00 AM, and verified by Same on _____ at _____

SEP 1996
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Dep. E Stull
DEPUTY SHERIFF

CLERK OF COURT

Troy Delahoussaye 9-14-86

Rev. 5-77

0 9 1 6 0 6 0 1 7 9 9

STATE OF LOUISIANA
PARISH OF JEFFERSON

24thdsit COURT

I, TROY M DELAHOUSSAYE
(NAME)

Of 913 N CLAIBORNE ST WESTWEGO, LA.
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: POSS MARIJUANA CRIM MISHCIEF

and having been admitted to bail in the sum of FIVE HUNDRED Dollars ($ 500.00) by order of the Hon. G. THOMAS PORTEOUS Judge of the 24th dsit Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24thdsit Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 106035-D

COMPLAINT NO. T9074-86

DATE

DEPOSIT NO.

DATE OF BIRTH N/M 072859

ARREST DATE 9-14-86 PLACE WESTWEGO

RELEASE DATE 9-14-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIVE HUNDRED Dollars ($ 500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X Dollars ($ X X X X)and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24thdsit COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M.
TO B ENOTIFIED

x Troy Delahoussaye
DEFENDANT

x 913 N Claiborne St Wwego
ADDRESS

Verbal order of Hon. G. THOMAS PORTEOUS 4 436-0 Judge, 24thdist Court, received by SGT JC AMBE on 9-14-86 at JPCCC, and verified by SGT JC AMBE on 9-14-86 at 4:26 PM

SEP 1986 RECEIVED

J Cambre
DEPUTY SHERIFF
SGT JC AMBRE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

Form No. 8-002
Rev. 5-77

Ditta, Chris M. 9-10-86

STATE OF LOUISIANA 0 9 1 2 6 4 0 0 0 1 4 **COURT**
PARISH OF JEFFERSON 24TH JUDICIAL DISTRICT

PERSONAL SURETY BAIL UNDERTAKING

CHRIS M. DITTA having been arrested for the crime of SIMPLE BURGLARY OF A RESIDENCE

and having been admitted to bail in the sum of **FIVE-THOUSAND DOLLARS ** Dollars ($ 5,000.00) by order of the Hon. JD. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, CAROLYN W DITTA of 787 GLENCOVE LN GRETNA LA.

I, GERALD P. DITTA of 787 GLENCOVE LN. GRETNA

hereby undertake that the above named CHRIS M. DITTA will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **FIVE-THOUSAND** Dollars ($ 5,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE ____ DAY OF ____, 19____ AT ____ A.M.

** TO BE NOTIFIED**

BOND NO. 1058940

COMPLAINT NO. H14426 86

DATE ____

DEPOSIT NO. ____

DATE OF BIRTH 02-11-68 W/M

ARREST DATE 9-9-86 PLACE GRETNA

RELEASE DATE 9-10-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Chris Ditta
DEFENDANT Cochran

787 Glencove (393-714
ADDRESS

1 x Carolyn Ditta
SURETY

787 Glencove Ln - 393-7143
ADDRESS

2 x Gerald Ditta
SURETY

787 Glencove Ln. 393-7143
ADDRESS

FILED FOR RECORD
SEP 11 11 09 AM
PARISH OF JEFFERSON, LA.

Verbal order of Hon. JD. J. CREPER Judge, 24TH JUDICIAL DISTRICT Court, received by DEP. PERRET/DEP. R. DUCOMBS on ____ at ____, and verified by ____ on ____ at ____.

Deputy R
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
SEP 12
FOR PERSONS ON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5 77

Dragna Cathy B 9-8-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 0 9 8 6 0 1 9 0 8 24th dist COURT

PERSONAL SURETY BAIL UNDERTAKING

CATHY B DRAGNA having been arrested for the crime of
WORTHLESS CHECK $32,392.76 & FORGERY

and having been admitted to bail in the sum of FIFTEEN THOUSAND
Dollars ($ 15,000.00) by order of the Hon. H. THOMAS PORTEOUS, Judge of
the 24thdsit Court for the Parish of Jefferson,
I, DOUGLAS D DRAGNA of 960 BEECHGROVE APT A NINE MILE POINT,LA. 70094
I, of
hereby undertake that the above named CATHY B DRAGNA
will appear at all stages of the proceedings in the 24th dsit
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIFTEEN THOUSAND Dollars ($ 15,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24thdsit COURT ON
THE DAY OF , 19 AT A.M.
TO B ENOTIFIED

BOND NO. 105857-D
COMPLAINT NO. 15167-86
DATE
DEPOSIT NO.
DATE OF BIRTH W/F 100557
ARREST DATE 9-8-86 PLACE GRETNA
RELEASE DATE 9-8-86 PLACE JPCGC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH

Cathy Dragna
DEFENDANT
#5 Blueberry Ct. Metairie La. 70004
347-5235
x Douglas D Dragna
SURETY
x #5 Blueberry Metairie
ADDRESS
PHONE 347-5235
SURETY
ADDRESS

FILED FOR RECORD
SEP 9 11 07 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. J J MOLAISON Judge, 2nd parish Court, received by SGT JCAMBRE on 9-8-86 at JPCGC, and verified by SGT JCAMBRE on 9-8-86 at 8.50 PM.

J Cambre
DEPUTY SHERIFF
SGT JCAMBRE

CLERK OF COURT

RECEIVED SEP 1986 CRIMINAL DIST. COURT

Form No. B-002
Rev. S-77

STATE OF LOUISIANA 2 4 8 6 0 0 5 24th Judicial COURT
PARISH OF JEFFERSON

Fred Mendez 9-18-86

PERSONAL SURETY BAIL UNDERTAKING

Mark A. Ford having been arrested for the crime of attachment Simple Burglary (75132 J)

and having been admitted to bail in the sum of Five Thousand Dollars ($ 5,000.00) by order of the Hon. Jd. Parteous, Judge of the 24th Judicial Dist. Court for the Parish of Jefferson, I, Paul B. Datri Jr. of Rt. 6 Box 252C New Orleans, LA

I, _____ of _____

hereby undertake that the above named Mark A. Ford. will appear at all stages of the proceedings in the 24th Judicial Dist. Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and, that if he fails to perform any of these conditions, I will pay this Court the sum of Five Thousand Dollars ($ 5,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial Dist COURT ON THE X DAY OF X, 19 X AT X A.M.

BOND NO. 106206-D
COMPLAINT NO. I 1202286
DATE
DEPOSIT NO.
DATE OF BIRTH 12-16-54 W/M
ARREST DATE 09-18-86 PLACE W/B
RELEASE DATE 09-18-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

To Be Notified
9 AM 9-24-86
X Mark Ford
DEFENDANT
X 8713 Lakeview Dr. 244-8971
ADDRESS
SURETY
ADDRESS
X Paul B Datri
SURETY
X RT 6 Box 252C
N.O. La. 70129
ADDRESS
Phone 6685167

FILED SEP 23 10 AM

Verbal order of Hon. Jd. Parteous Judge, 24th Judicial Dist Court, received by Dep. E. Potin on 09-18-86 at JPCC and verified by same on same

SEP 1986 RECEIVED

To Be replaced by Property Bond within one week - per Jd. Parteous

DEPUTY SHERIFF

CLERK OF COURT

Form No. B-002
Rev. 5-77

0 9 1 5 0 0 -

Gutierrez Cesar
9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Cesar A. Gutierrez having been arrested for the crime of Possession of Stolen Property R.S. 14:69.B

and having been admitted to bail in the sum of Thirty Five Hundred Dollars ($ 3500.00) by order of the Hon. Jd. Pasteur, Judge of the 24th Judicial District Court for the Parish of Jefferson, I, MARTHA M. TABORA of 324 RIVER POINT DESTREHAN LA

I, _____ of _____

hereby undertake that the above named Cesar A. Gutierrez will appear at all stages of the proceedings in the 24th Judicial District Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Thirty Five Hundred Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE X DAY OF X, 19 X AT X A.M.
To Be Notified

BOND NO. 105948-D
COMPLAINT NO. H2164186
DATE
DEPOSIT NO.
DATE OF BIRTH 01-18-66 W/M
ARREST DATE 09-09-86 PLACE METAIRIE
RELEASE DATE 09-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT. AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X 468-8482
X [illegible] Gutierrez
DEFENDANT
X 633 LANCER LANE
ADDRESS
X Martha M. Tabora
SURETY
X 324 River Point Destrehan La 70047
ADDRESS (504) 464-1212
PHONE: (504) 764-0250H
SURETY
ADDRESS

FILED FOR RECORD
SEP 12 3 14 PM '86
PARISH OF JEFFERSON

Verbal order of Hon. Jd. V. Wiltz Judge, 24th Judicial District Court, received by Dep. R. Miranda on 09-11-86 at JPCC, and verified by Same on Same at _____.

R.O.R.
NOTIFY - R.O.R.
ROOM 806

E. Martin Jr
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
SEP 1986
JEFFERSON PARISH SHERIFF'S OFFICE

Form No. B-002
Rev 5-77

Barry Drowne 9-8-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

0 9 0 9 8 6 0 1 9 1 1

PERSONAL SURETY BAIL UNDERTAKING

Barry L. Drowne having been arrested for the crime of
RS 14:34.1

and having been admitted to bail in the sum of Seventy Five Hundred Dollars ($ 7500.00) by order of the Hon. Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson, I, John L. Drowne of 438 Meyers Bl. Marrero La. I, Jacquelyn Drowne of 438 Meyers Bl. Marrero, La. hereby undertake that the above named Barry Drowne will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Seventy Five Hundred Dollars ($ 7500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE To Be DAY OF Notified, 19____ AT____ A.M.

BOND NO. 105846

COMPLAINT NO. I0455186

DATE

DEPOSIT NO.

DATE OF BIRTH 5-10-61

ARREST DATE 9-8-86 PLACE Marrero

RELEASE DATE 9-8-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Barry L. Drowne
DEFENDANT
438 Meyers Blvd
ADDRESS
x John L. Drowne Jr
SURETY
438 Meyers Blvd Marrero, La. 70072
ADDRESS
x Jacquelyn Drowne
SURETY
x 438 Meyers Blvd.
ADDRESS
Phone

Verbal order of Hon. Whitty Judge, 24th Judicial Court, received by ____ at ____, and verified by ____ at ____ on ____

R.O.R.
NOTIFY - R. O. R.
ROOM 806

DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED
CLERK OF COURT
PRINCIPAL OFFICE

FILED
SEP 9 11 03 AM '86
CLERK OF COURT
PARISH OF JEFFERSON

Form No. 8-002
Rev 5-77

0 9 1 5 8 6 0 0 0 3 7

Guici Timothy G 5-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL **COURT**

455-3161

PERSONAL SURETY BAIL UNDERTAKING

TIMOTHY E. GUICE having been arrested for the crime of
ATTACHMENT #861396J

and having been admitted to bail in the sum of TWENTY FIVE HUNDRED
Dollars ($2,500) by order of the Hon. T. T. PORTEOUS, Judge of
the 24th JUDICIAL Court for the Parish of Jefferson,
I, HENRY G. GUICE of 3508 TARTAN DR. METAIRIE, LA.
I, of
hereby undertake that the above named TIMOTHY E. GUICE
will appear at all stages of the proceedings in the 24th JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY FIVE HUNDRED
Dollars ($2,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON
THE 18th DAY OF SEPTEMBER, 19 86 AT 9:30 A.M.

BOND NO. 65902-A

COMPLAINT NO. I-2969-86

DATE

DEPOSIT NO.

DATE OF BIRTH 3-31-67

ARREST DATE 9-05-86 PLACE EAST BANK

RELEASE DATE 9-05-86 PLACE EAST BANK

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Timothy Guici
DEFENDANT

3508 Tartan Dr.
ADDRESS

H.G. Guice
SURETY

3508 Tartan Dr. Met, La. 70003
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
SEP 12 3 15 PM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. G. PORTEOUS Judge, 24th JUDICIAL
Court, received by DRP. L. O'LEARY on
9-06-86 at 1:20PM, and verified by
SAME on SAME at SAME.

Sgt. D. Crews SGT. D. CREWS
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
SEP 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

[redacted]

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

Gossett Nes 9-11-86

PERSONAL SURETY BAIL UNDERTAKING

NESBY GOSSETT JR. having been arrested for the crime of RS 14-24:62.3 - PRINCIPAL TO UNAUTHORIZED ENTRY OF INHABITED DWELLING

and having been admitted to bail in the sum of SEVEN THOUSAND FIVE HUNDRED Dollars ($ 7500.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of the 24TH JUDICIAL Court for the Parish of Jefferson,

I, JETALINE M. GOSSETT of 1920 KANSAS AVE, KENNER, LA.

I, _____ of _____

hereby undertake that the above named NESBY GOSSETT JR.

will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of SEVEN THOUSAND FIVE HUNDRED Dollars ($ 7500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE TO BE DAY OF NOTIFIED, 19 — AT — A.M.

BOND NO. 65979-A

COMPLAINT NO. I-6824-86

DATE

DEPOSIT NO.

DATE OF BIRTH 10-21-51

ARREST DATE 9-10-86 PLACE 4500 CLEARLAKE

RELEASE DATE 9-11-86 PLACE J.P.S.O.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Nesby Gossett Jr.
DEFENDANT

X 1920 Kansas Ave
ADDRESS

X Jetaline Gossett
SURETY

X 1920 Kansas Ave
ADDRESS

SURETY

ADDRESS

FILED
SEP 12 3 15 PM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24TH JUDICIAL Court, received by C.O. D. HIMEL on 9-11-86 at 1:30 PM, and verified by Same on Same at Same

Don P. Hymel
DEPUTY SHERIFF

CLERK OF COURT

SEP 1586
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

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Garza George A 9-14-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

GARZA, GEORGE A W/M having been arrested for the crime of RS 14-108.1, RS 14-122, RS 14-103, RS 14-34.2

and having been admitted to bail in the sum of TWENTY FOUR HUNDRED Dollars ($ 2,400.00) by order of the Hon. PORTEOUS, Judge of the 24TH JUDICIAL Court for the Parish of Jefferson,

I, BOUDREAUX, MARK of 153 CAMBAY AVONDALE LA

I, of

hereby undertake that the above named GARZA, GEORGE A will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY FOURHUNDRED Dollars ($ 2,400.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE DAY OF , 19 AT A.M.
TO BE NOTIFIED

BOND NO. 101943D

COMPLAINT NO. I 957586

DATE

DEPOSIT NO.

DATE OF BIRTH 081759

ARREST DATE 091486 PLACE 2ND DIST

RELEASE DATE 091486 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

X [signature] DEFENDANT
X [signature] ADDRESS

SURETY

ADDRESS

X [signature] SURETY
X 153 CAMBAY DR ADDRESS
AVONDALE, LA. 70094
436-1869

FILED SEP 9 4 48 AM '86 CLERK OF COURT JEFFERSON PARISH, LA.

Verbal order of Hon. PORTEOUS Judge,
24TH JUDICIAL Court, received by SGT D S WOLFSON on
091486 at JPCC INTAKE BOOKING , and verified by
on at .

SEP 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

SGT D S WOLFSON
DEPUTY SHERIFF

CLERK OF COURT

Harris Carlester 9-16-96

Form No. B-002 Rev. 3-87

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

HARRIS, CARLESTER 092280601410 having been arrested for the crime of
RS 14-67

and having been admitted to bail in the sum of TWENTY FIVE HUNDRED
Dollars ($ 2500.00) by order of the Hon. JD PORTEOUS, Judge of
the 24TH JUDICIAL Court for the Parish of Jefferson,
I, JAMES WARD of 4069 S. DELLS ST HARVEY, LA
I, of
hereby undertake that the above named CARLESTER HARRIS
will appear at all stages of the proceedings in the 24TH JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY FIVE HUNDRED Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON
THE DAY OF , 19 AT A.M.
TO BE NOTIFIED

BOND NO. 106093-D
COMPLAINT NO. I-9205-96
DATE 9/16/96
DEPOSIT NO.
DATE OF BIRTH 3/20/59
ARREST DATE 9/14/96 PLACE 1ST
RELEASE DATE 9/16/96 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

DEFENDANT
x 1229 Arthur St 361-9644 ADDRESS Harvey LA
SURETY
ADDRESS
x James Ward
SURETY
x 4069 S. Dells Harvey
ADDRESS
x 341-5565
PHONE

Verbal order of Hon. JD WILTZ Judge, JUSTICE OF THE PEACE
9/16/96 Court, received by DEP. K. SMITH on
at 2:06PM, and verified by
on at

R.O.R.
NOTIFY - R.O.R.
ROOM 806

DEPUTY SHERIFF
CLERK OF COURT

SEP 1996
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

Form No. 8-002
Rev. 5-77

Herguet Mary 9-13-86

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Mary E. Herguet having been arrested for the crime of RS 14:122, RS 40:966A(1)P, RS 14:103

and having been admitted to bail in the sum of Two Thousand Fifty Dollars ($ 2050.00) by order of the Hon. Judge Porteous, Judge of the 24th Judicial District Court for the Parish of Jefferson,

I, Mary Herguet Bua of 2613 Jasper St. Kenner

I, _____ of _____

hereby undertake that the above named Mary E. Herguet will appear at all stages of the proceedings in the 24th Judicial District Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Two Thousand Fifty Dollars ($ 2050.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____, 19_____ AT _____ A.M.

TO-BE-Notified

BOND NO. 1060040

COMPLAINT NO. I 08344.86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 06 20 61

ARREST DATE 91386 PLACE E/B

RELEASE DATE 91386 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Mary Ellen Herguet
DEFENDANT
1536 W. Esplanade Ave. #
ADDRESS
Kenner LA. 70065
SURETY

ADDRESS

Mary Ellen Bua
SURETY
2613 Jasper Kenner
ADDRESS
469-3466
Phone #

Verbal order of Hon. Judge Porteous Judge, 24th Judicial District Court, received by Dep. E. Stott on 9-13-86 at 6:50 AM, and verified on _____

FILED FOR RECORD SEP 13 1986 PARISH OF JEFFERSON STATE OF LOUISIANA SEP 13 '86 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

Dep. E. Stott
DEPUTY SHERIFF

CLERK OF COURT

C Holmes Chiatella 9-13-86

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Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

I, HOLMES, CHRISTELLA
(NAME)

Of 6565 BENEDICT (STREET ADDRESS) MARRERO (CITY) LA (STATE)

Having been arrested for the crime(s) of: RS 14.62

and having been admitted to bail in the sum of FOURTEEN HUNDRED Dollars ($ 1500.00) by order of the Hon. JD PARTINS Judge of the 24TH JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105994D
COMPLAINT NO. I-8156-86
DATE
DEPOSIT NO.
DATE OF BIRTH 12-25-64
ARREST DATE 9-12-86 PLACE 3RD DIST
RELEASE DATE 9-13-86 PLACE JAIL

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT. AND IF CHANGED FOR ANY REASON WHATSOEVER IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIVE THOUSAND HUNDRED Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of XXXXXXXX Dollars ($ XXXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE TO BE DAY OF HOLDING, 19 ___ AT ___ A.M.

X Christella Holmes
DEFENDANT

X Christella Holmes
6565 Benedict
ADDRESS

Verbal order of Hon. P.B.U. Judge,
JD PARTINS Court, received by 9-13-86 on
___ at ___
___ on ___ and certified

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Harris Roosevelt 9-11-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, Roosevelt Jr. Harris (NAME)

of 1917 Estelle St. Harvey, La (STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of. RS 14-69

and having been admitted to bail in the sum of Two Thousand Five Hundred Dollars ($ 2500.00) by order of the Hon. Porteous Judge of the 24th Judicial Court for the Parish of Jefferson

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105945-D.
COMPLAINT NO. A-967-86
DATE
DEPOSIT NO.
DATE OF BIRTH 2-7-50
ARREST DATE 9-11-86 PLACE W.O
RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Two Thousand Five Hundred Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of XXXXXXXX Dollars ($ XXXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE XXXX DAY OF XXXX, 19 X AT XXXXXX A.M.
TO BE NOTIFIED

Roosevelt Harris Jr. 1917 Estelle St Harvey, La 367-1264
DEFENDANT ADDRESS

Verbal order of Hon. Porteous Judge,
24th Judicial Court, received by EPT on
9-11-86 at 5:45p and verified by
on at

SEP 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

DEPUTY

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 5-77

Hyman Martha E.
9-19-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

MARTHA E. HYMAN having been arrested for the crime of
RS 14:133.1 OBSTRUCTION OF COURT ORDERS

and having been admitted to bail in the sum of TWENTY-FIVE HUNDRED
Dollars ($ 2,500.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of
the 24TH JUDICIAL Court for the Parish of Jefferson,
I, EARL M HYMAN of 4607 CLEARY AVE. METAIRIE, LA.
I, of
hereby undertake that the above named Martha E. Hyman
will appear at all stages of the proceedings in the 24TH JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY-FIVE HUNDRED Dollars ($ 2,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE TO BE DAY OF NOTIFIED, 19 AT A.M.

BOND NO. 66085-A

COMPLAINT NO. I-12272-86

DATE

DEPOSIT NO.

DATE OF BIRTH 12-11-49

ARREST DATE 9-18-86 PLACE METAIRIE

RELEASE DATE 9-19-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x M Hyman
DEFENDANT

x 4813 Lilac Park
ADDRESS

x Earl M Hyman
SURETY

x 4607 Cleary Ave.
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
SEP 25 11 03 AM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24TH JUDICIAL Court, received by SGT. D.J. MUMPHREY on 9-18-86 at 1120PM and verified by SAME on SAME.

RECEIVED
SEP 1986
SHERIFF'S OFFICE
JEFFERSON PARISH, LA.

Sgt. David J. Mumphrey
DEPUTY SHERIFF

CLERK OF COURT

Form No. B-002
Rev. 5-77

Jackson Frank
9-13-86

0 9 1 6 0 6 0 1 8 1 1

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

FRANK JACKSON having been arrested for the crime of
RS 14-34 AGG. BATTERY

and having been admitted to bail in the sum of TEN THOUSAND
Dollars ($ 10,000) by order of the Hon. JD. PORTEOUS, Judge of
the 24TH JUDICIAL Court for the Parish of Jefferson,
I, DAVID M. JACKSON of 201 AMAPOLA DR GRETNA LA.
I, of
hereby undertake that the above named FRANK JACKSON
will appear at all stages of the proceedings in the 24TH JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TEN THOUSAND
Dollars ($ 10,000) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON
THE TO BE DAY OF NOTIFIED, 19 AT A.M.

BOND NO. 106015D

COMPLAINT NO. I 8615 86

DATE

DEPOSIT NO.

DATE OF BIRTH E 061169

ARREST DATE 091386 PLACE WB

RELEASE DATE 091386 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT. AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Frank Jackson
DEFENDANT

X 201 Amapola CTR.
ADDRESS

X David M Jackson
SURETY

X 201 Amapola Cir.
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
SEP 16 9 48 AM
CLERK OF COURT

Verbal order of Hon. JD. EASON Judge, 24TH JUDICIAL
Court, received by DEP. E. PATIN on
091386 at 9:56 PM, and verified by
on at

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Jackson, Milton
9-14-86

Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON 24thdsit **COURT**

I, MILTON JACKSON
(NAME)

Of 1328 31wtr Kenner,La.
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: POSS MARIJUANA
and having been admitted to bail in the sum of FIVE HUNDRED Dollars
($ 500.00) by order of the Hon. G. THOMAS PORTEOUS Judge of the
24th dist Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th dair Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 106036-D
COMPLAINT NO. I8273-86
DATE
DEPOSIT NO.
DATE OF BIRTH N/M 071654
ARREST DATE 9-12-86 PLACE KNNER
RELEASE DATE 9-14-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIVE HUNDRED Dollars ($ 500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X X X Dollars ($ X X X X X) and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE
DAY OF , 19 AT A.M.
TO BE NOTIFIED

X milton jackson
DEFENDANT

X 1328 31 K KENNER Ohio
ADDRESS

Verbal order of Hon. G. THOMAS PORTEOUS X469-46259, Judge,
24th dsit Court, received by SGTJ CAMBRE on
9-14-86 at JPCCC, and verified by
SGT J CAMBRE on 9-14-86 at 4:26 PM

DEPUTY SHERIFF
SGTJ CAMBE

RECEIVED SEP 1986 INTERSTATE PACKET SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

0915860086 7

Rev. 5-77

Generette James
9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, James Generette (NAME)
Of 2406 Sandra Dr. (STREET ADDRESS) Harvey (CITY) La. (STATE)
Having been arrested for the crime(s) of: 14:62
and having been admitted to bail in the sum of five thousand Dollars ($ 5000.00) by order of the Hon. Parteau Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105926D
COMPLAINT NO. I047398L
DATE 9-11-86
DEPOSIT NO.
DATE OF BIRTH 11-13-36
ARREST DATE 9-7-86 PLACE Central
RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of five thousand Dollars ($ 5000.00) after said bail has been forfeited in accordance with the law. .

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of XXX Dollars ($ XXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE ____ DAY OF ____, 19__ AT To Be Notified A.M.

James Generette
DEFENDANT

2406 Sandra Dr. Harvey
ADDRESS

Ph- None

Verbal order of Hon. Parteau, Judge, 24th Judicial Court, received by Melerine on 9-11-86 at 2:00, and verified by ____ on ____ at ____

SEP 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

Deputy Sheriff

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

Kenard Edward 9-17-86

Rev. 5-77

0 9 1 6 8 6 0 1 8 1 2

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, Edward Kinard III (NAME)

Of 2006 Hendee Ct #1E, NOLA (STREET ADDRESS) (CITY) (STATE)

Having been arrested for the crime(s) of: 14:27/67, 72

and having been admitted to bail in the sum of Three Thousand Dollars ($3,000.00) by order of the Hon. Porteous Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105984-D
COMPLAINT NO. I5065886
DATE
DEPOSIT NO.
DATE OF BIRTH 1/19/56
ARREST DATE 9/12/86 PLACE W/B
RELEASE DATE 9/12/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Three Thousand Dollars ($3,000.00) after said bail has been forfeited in accordance with the law.

~~**DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)**~~

~~I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of Dollars ($); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.~~

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE DAY OF , 19 , AT A.M.

Notified!

Edward Kinard III (DEFENDANT) 2006 Hendee Ct (ADDRESS) 368-9239 (PHONE)

Verbal order of Hon. Porteous Judge, 24th Judicial Court, received by Dep Patin on 9/12/86 at 6:20 PM

Same on at

SEP 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

Dep E Patin (DEPUTY SHERIFF)

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Killebrew Virgil
9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

I, KILLEBREW, VIRGIL
(NAME)
of 2401 DIVISION STREET-E41-METAIRIE, La.
(STREET ADDRESS) CITY STATE
Having been arrested for the crime(s) of: 14:71 — 4 counts—
and having been admitted to bail in the sum of thirty five hundred Dollars
($ 3500.00) by order of the Hon. PORTEOUS Judge of the
24th JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105925D
COMPLAINT NO. B0957386-C5004085 A1931986-C1634186
DATE 9-11-86
DEPOSIT NO.
DATE OF BIRTH 10-11-49
ARREST DATE 7-16-86 PLACE 2nd
RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of thirty five hundred Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

FILED FOR RECORD
SEP 11 14 PM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($ _____); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON THE 14th DAY OF OCTOBER, 19 86 AT 9:00 A.M.

Virgil K. Killebrew
DEFENDANT

2401 Division St. Metairie
ADDRESS
No Phone

Verbal order of Hon. PORTEOUS, Judge, 24th JUDICIAL Court, received by DEP. N. MELERINE on 9-11-86 at 9:00 AM, and verified by _____ on _____ at _____

Karla Smith
DEPUTY (SHERIFF)

SEP 1986
RECEIVED
CRIMINAL RECORDS
SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 5-77

laurin lawless 9-12-86

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th ~~JUDICIAL DISTRICT~~ COURT

PERSONAL SURETY BAIL UNDERTAKING

LAURIN L LAWLESS having been arrested for the crime of UNAUTHORIZED USE OF AN ACCESS CARD, FORGERY

and having been admitted to bail in the sum of **FOUR-THOUSAND ** Dollars ($ 4,000.00) by order of the Hon. JD. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, Carolyn Y. YOUNG of 1636 MAJESTIC LPACE MARRERO LOUISIANA

I, of

hereby undertake that the above named LAURIN L LAWLESS will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **FOUR-THOUSAND** Dollars ($ 4,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE DAY OF , 19 AT A.M.

** TO BE NOTIFIED**

BOND NO. 105966-D

COMPLAINT NO. I05951 86

DATE

DEPOSIT NO.

DATE OF BIRTH 10-25-62 N/F

ARREST DATE 9-11-86 PLACE W. Bank

RELEASE DATE 9-12-86 PLACE J.P.C.C.C

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Laurin Lawless
DEFENDANT

1636 Majestic Pl.
347-4443 ADDRESS MARRERO, LA

SURETY

ADDRESS

Carolyn Young
SURETY

1636 Majestic
ADDRESS

phone # 347-4443

Verbal order of Hon. JD. PROTEOUS Judge, 24TH JUDICIAL DISTRICT Court, received by DPE. R. DUCOMB on at , and verified by on at

SEP 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

Deputy R. Ducomb
DEPUTY SHERIFF

CLERK OF COURT

Form No. B-002
Rev. 5-77

Liddell Rhonda 9-10-86

0 9 1 6 8 6 0 1 0 1 5

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

PERSONAL SURETY BAIL UNDERTAKING

RHONDA E LIDDELL having been arrested for the crime of SYSTEMATIC THEFT

and having been admitted to bail in the sum of **THREE-THOUSAND-FIVE-HUNDRED** Dollars ($ 3,500.00) by order of the Hon. JD. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, _____ of _____

I, _____ of _____

hereby undertake that the above named RHONDA E. LIDDELL will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of**THREE-THOUSAND-FIVE-H
HUNDRED** Dollars ($ 3,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

** TO BE NOTIFIED**

BOND NO. 10592-D

COMPLAINT NO. D21214 86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 01-15-64 B/F

ARREST DATE 09-11-86 PLACE KENNER

RELEASE DATE 09- -86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Rhonda E Liddell
DEFENDANT

333 Filmore St Ken
ADDRESS

_____
SURETY

_____
ADDRESS

Victoria Liddell
SURETY

333 Filmore St Kenner
ADDRESS

Phone # 466-4446

FILED FOR RECORD
SEP 16 9 47 AM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. JD. WILTY Judge, R.O.R. JUSTICE OF THE PEACE Court, received by DEP. R. DUCOMBS on _____ at _____, and verified by _____ on _____ at _____.

DEPUTY SHERIFF

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Levine, Stanley
9-9-86

Rev 5.77

0912060000 20

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

I, STANLEY S. LEVINE
(NAME)

Of #74 SCHILL SVE KENNER LOUISIANA
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: RS 14:66.5

and having been admitted to bail in the sum of **THIRTY-FIVE-HUNDRED** Dollars ($ 3,500.00) by order of the Hon. JD. PORTEOUS Judge of the 24th JUDICIAL DISTRICT Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105872D

COMPLAINT NO. G 13190 -86

DATE

DEPOSIT NO.

DATE OF BIRTH 11-26-36

ARREST DATE 9-9-86 PLACE KENNER

RELEASE DATE 9-9-86 PLACE J.P.C.C.

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT. AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of **THIRTY-FIVE-HUNDRED** Dollars ($ 3,500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of ~~Dollars~~; and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

FILED SEP 11 '86 AM 11 RECORDED PARISH OF JEFFERSON STATE OF LOUISIANA

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE ____ DAY OF ____, 19__ AT ____ A.M.

** TO BE NOTIFIED**

Stan Levine
DEFENDANT

24 Schill Kenner
ADDRESS

Ph- 443-2424

Verbal order of Hon. JD. PORTEOUS, Judge, 24TH JUDICIAL DISTRICT Court, received by DEP. R. DUDOMBS on ____ at ____, and verified by ____ on ____ at ____

Deputy R
DEPUTY SHERIFF

SEP 1986 RECEIVED CRIMINAL RECORDS SECTION SHERIFF'S OFFICE

JP50 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

Lewis Booty 9-11-86

PERSONAL SURETY BAIL UNDERTAKING

Bobby D. Lewis having been arrested for the crime of
RS 14:67 Theft value $115.00

and having been admitted to bail in the sum of One Thousand Five Hundred Dollars ($1,500.00) by order of the Hon. G. Thomas Porteous, Judge of the Twenty Fourth Judicial Court for the Parish of Jefferson,
I, James C. Lewis of 620 Charles St. Ken., La
I, _____ of _____
hereby undertake that the above named Bobby D. Lewis
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of One Thousand Five Hundred Dollars ($1,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE To Be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 65990-A

COMPLAINT NO. I-7116-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 04-08-63

ARREST DATE 9-11-86 PLACE 3400 N. Causeway

RELEASE DATE _____ PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Bobby Lewis
DEFENDANT

620 Charles St
ADDRESS

James C Lewis
SURETY

620 Charles St Kenner
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
SEP 12 3 15 PM '86
PARISH OF JEFFERSON, LA.

Verbal order of Hon. G. Thomas Porteous Judge, Twenty-Fourth Judicial Court, received by Sgt. D. Bates on 9-11-86 at 7:00pm, and verified by Same on Same at Same.

Sgt. D. Bates
DEPUTY SHERIFF

RECEIVED
SEP 1986
JEFFERSON PARISH
DISTRICT ATTORNEY'S OFFICE

CLERK OF COURT

Form No. 8-002
Rev 5-77

Messina Custom 9-16-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

PERSONAL SURETY BAIL UNDERTAKING

JOHN A MESSINA 0 9 2 2 8 6 0 1 4 3 3 having been arrested for the crime of
~~POSS 6 INTENT DIST COCAIEN 1 gram~~

and having been admitted to bail in the sum of TWENTY THOUSAND
Dollars ($ 20.000.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of
the 24th dsit Court for the Parish of Jefferson,
I, RUSSELL MISSINA of 5121 BURKE DR. MET
I, _____ of _____
hereby undertake that the above named JOHN A MESSINA
will appear at all stages of the proceedings in the 24th dsit
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY THOUSAND Dollars ($ 20.000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON
THE _____ DAY OF _____, 19____ AT _____ A.M.
TO BE NOTIFIED

BOND NO. 106097
COMPLAINT NO. H4198-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH W/M 010941
ARREST DATE 9-16-86 PLACE GRETNA
RELEASE DATE 9-16-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Joseph Messina
DEFENDANT
x 3507 Division St. Metairie x 455-2172
ADDRESS
x _____
SURETY
x 5121 Burke Dr. Met, La
ADDRESS
PHONE 454-6106
SURETY
_____
ADDRESS

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24thdsit
Court, received by SGT J CAMBRE on
9-16-86 at JPCCC, and verified by
~~SGT J CAMBRE~~ on ~~9-16-86~~ at ~~2.50 PM~~.

J Cambre
DEPUTY SHERIFF
SGT J CAMBRE

CLERK OF COURT

SEP 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

Martinez, Ray P. 9-5-86

Rev. 5 77

0 9 0 8 8 6 0 0 1 9 4 1

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, Ray P. Martinez (NAME)

Of 3608 Roman St, Metairie, La (STREET ADDRESS) (CITY) (STATE)

Having been arrested for the crime(s) of: 14:72, 67

and having been admitted to bail in the sum of Two Thousand Five Hundred Dollars ($ 2,500.00) by order of the Hon: Fortenberry Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105745-D

COMPLAINT NO. 86-1740

DATE

DEPOSIT NO.

DATE OF BIRTH 6/23/47

ARREST DATE 9/5/86 PLACE

RELEASE DATE 9/5/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions I will pay to this Court the sum of Two Thousand Five Hundred Dollars ($ 2,500.00) after said bail has been forfeited in accordance with the law.

~~**DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)**~~

~~I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of Dollars ($); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.~~

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE DAY OF To Be Notified 19 AT A.M.

Ray P. Martinez
DEFENDANT

X 3608 Roman St.
Metairie, La. 70002
ADDRESS
ph#

Verbal order of Hon. Fortenberry Judge, 24th Judicial Court, received by on at and verified by on

DEPUTY SHERIFF

FILED
SEP 06 AM
CLERK OF COURT
JEFFERSON PARISH, LA.

RECEIVED
SEP 1986
JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 6-77

Motton Charlene 9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Charlene Motton having been arrested for the crime of RS 14-67.3, RS 14-72

and having been admitted to bail in the sum of Four thousand Dollars ($ 4,000.00) by order of the Hon. J D Pasteaus, Judge of the 24th Judicial District Court for the Parish of Jefferson, I, Clifford Scott of 6432 Rue Louis Phillipe Marrero, La I, Leona S. Scott of 6432 Rue Louis Phillipe MARRERO, LA hereby undertake that the above named Charlene Motton will appear at all stages of the proceedings in the 24th Judicial District Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Four thousand Dollars ($ 4000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial Dist. COURT ON THE _____ DAY OF TO BE NOTIFIED 19 AT _____ A.M.

BOND NO. 105936-D

COMPLAINT NO. I0595186

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 8-27-64

ARREST DATE 9-10-86 PLACE W/B

RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Charlene Motton
DEFENDANT

2034 Bells Chase Ln Apt 19
ADDRESS

1) Leona S Scott
SURETY $40823.99

6437 Rue Louis Philippe
ADDRESS

2) Clifford Scott
SURETY $40823.99

6432 Rue Louis Phillippe
ADDRESS

FILED FOR RECORD
SEP 12 3 14PM
CLERK OF COURT
PARISH OF JEFFERSON

Verbal order of Hon. Judge V. Wiltz Judge, 1st Justice of the Peace Court, received by Dep. E. [illegible] on 9-11-86 at _____, and verified by _____ on _____ at _____.

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep E. [illegible]
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
SEP 1986
CRIMINAL BONDS
SHERIFF'S OFFICE

Form No. B-002
Rev 5-77

Martin Rodney 9-12-86

0 9 1 6 0 6 0 1 0 1 9

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

PERSONAL SURETY BAIL UNDERTAKING

RODNEY A MARTIN having been arrested for the crime of SIMPLE KIDNAPPING, SIMPLE ROBBERY

and having been admitted to bail in the sum of **TEN-THOUSAND** Dollars ($ 10,000.00) by order of the Hon. JD. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, MITCHELL J MARTIN JR. of 5018 AVENUE M MARRERO LOUISIANA

I, of

hereby undertake that the above named RODNEY A MARTIN will appear at all stages of the proceedings in the ** 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **TEN-THOUSAND Dollars ($ 10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE DAY OF , 19 AT A.M.

** TO BE NOTIFIED**

BOND NO. 105968D

COMPLAINT NO. I07419 86

DATE

DEPOSIT NO.

DATE OF BIRTH 07-21-54 W/M

ARREST DATE 9-11-86 PLACE W. BANK

RELEASE DATE 9-12-86 PLACE I.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Robert Martin 9-12-86
DEFENDANT

X 1112 Lee ST Marrero
ADDRESS

X M J Martin Jr.
SURETY

X 5018 Ave M.
ADDRESS

Marrero La. 70072
SURETY

347.3820
ADDRESS

Verbal order of Hon. JD. XXXXXXXX PORTEOUS Judge, 24TH JUDICIAL DISTRICT Court, received by DEP RL DUCOMBS on at , and verified by on at

FILED
SEP 15 1986
CLERK OF COURT
JEFFERSON PARISH, LOUISIANA

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Form No. B-002
Rev. 5-77

Porter, Eric
9-10-86

STATE OF LOUISIANA 0 9 1 2 6 6 0 **24th Judicial COURT**
PARISH OF JEFFERSON

PERSONAL SURETY BAIL UNDERTAKING

Eric Porter having been arrested for the crime of
14:67.A

and having been admitted to bail in the sum of One Thousand Five Hundred
Dollars ($ 1,500.00) by order of the Hon. Forteneu Lourmet, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Louis Porter, Jr. of 1506 Jourdan Ave. NOLA
I, _____ of _____
hereby undertake that the above named Eric Porter
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of One Thousand
Dollars ($ 1,500.00) after said bail has been forfeited in accordance with the law. Five Hundred

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE _____ DAY OF _____, 19__ AT _____ A.M.
To be Notified

BOND NO. 105904D
COMPLAINT NO. H1091386
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 3/24/61
ARREST DATE 9/10/86 PLACE W/B
RELEASE DATE 9/10/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Ph-945-2260

Eric Porter
DEFENDANT

1506 Jourdan Ave. NO
ADDRESS

V. Louis Porter
SURETY

1506 Jourdan Ave
ADDRESS

945-2260
PH. #

ADDRESS

FILED FOR RECORD
SEP 11 11 15 AM '86
PARISH OF JEFFERSON, LOUISIANA

Verbal order of Hon. Forteneu Lourmet Judge,
24th Judicial Court, received by Dep Nucombe on
9/10/86 at 1:00 PM, and verified by
Same on _____ at _____.

Dep R Nucombe
DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Partman Harold 9-17-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, Harold Partman 228601434
(NAME)

Of 3323 Holly grove St New Orleans La
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: 14-67

and having been admitted to bail in the sum of One Thousand Dollars

($ 1000.00) by order of the Hon. Partman Judge of the

24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 106124

COMPLAINT NO. I 05916866

DATE 9-17-86

DEPOSIT NO.

DATE OF BIRTH 9-14-62

ARREST DATE 9-9-86 PLACE Ebsb

RELEASE DATE 9-17-86 PLACE Jail

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of One Thousand Dollars ($ 1000.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of XXXX Dollars ($ XXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____, 19 __, AT _____ A.M.

To be Telephoned

Harold Partman
DEFENDANT

3323 Hollygrove St.
488-0270
ADDRESS

Verbal order of Hon. Richards, Judge,
24th Judicial Court, received by _____ on
9-17-86 at 10:30 A, and verified by
_____ on _____ at _____

DEPUTY SHERIFF

SEP 17 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

[redacted]
Form [illegible] B-002
Rev. 5-77

0 9 1 5 0 6 0 0 3 7 6

Parker Curtis 9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

PARKER, CURTIS having been arrested for the crime of
14:56 – 28 counts –

and having been admitted to bail in the sum of Fifty six Thousand
Dollars ($ 56,000.00) by order of the Hon. PORTEOUS, Judge of
the 24th JUDICIAL Court for the Parish of Jefferson,
I, PATRICIA SHOUB PARKER of 6009 HOWELLS FERRY RD. MOBILE, ALAB 3661
I, EVON PARKER of 6009 HOWELLS FERRY RD. MOBILE, ALABAMA 3661
hereby undertake that the above named PARKER, CURTIS
will appear at all stages of the proceedings in the 24th JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Fifty six Thousand
Dollars ($ 56,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON
THE TO DAY OF BE, 19 AT NOTIFIED A.M.

BOND NO. 105940D
COMPLAINT NO. I0571586-I0603386-I0603786-I0573586-I0578286-I0568286-I0563986-I0564286-I0563186-I0564986-I0565286-I0574386-I0565586-I0564486-I0565386-I0560086-I0559286-I0559986-I0559586-I0604186-I0579386-I0579786-I0566886-I0559986

DATE 9-11-86

DEPOSIT NO.

DATE OF BIRTH 7-27-69

ARREST DATE 9-9-86 PLACE 2nd

RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Curtis Parker
DEFENDANT

X 6009 Howells Ferry Rd
ADDRESS

X Evon C. Parker
SURETY

X 6009 Howells Ferry Rd.
ADDRESS

X Patricia Parker
SURETY

X 6009 Howells Ferry Rd
ADDRESS

hmh 342-9280 wk 478-0663

Verbal order of Hon. PORTEOUS Judge, 24th JUDICIAL Court, received by DEPUTY MELERINE on 9-11-86 at 11:30 am, and verified by [illegible] on [illegible] at [illegible]

FILED SEP 12 1986
CLERK OF CRIMINAL DISTRICT COURT
PARISH OF JEFFERSON

Paula Smith
DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. 8-002
Rev. 6-77

0 9 1 5 8 6 0 0 0 0 4

Royal Evelyn 9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Evelyn Royal having been arrested for the crime of 14:67.3(B), 72

and having been admitted to bail in the sum of Four Thousand Dollars ($ 4,000.00) by order of the Hon. Perteous, Judge of the 24th Judicial Court for the Parish of Jefferson,
I, Leona S. Scott of 6437 Rue Louis Phil; Harvey
I, Clifford Scott of 6437 Louis Phillipe, Harvey
hereby undertake that the above named Evelyn Royal
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Four Thousand Dollars ($ 4,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE ____ DAY OF To Be Notified 19__ AT ____ A.M.

BOND NO. 105937-D
COMPLAINT NO. I595186
DATE
DEPOSIT NO.
DATE OF BIRTH 3/5/58
ARREST DATE 9/10/86 PLACE W/B
RELEASE DATE 9/11/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

+ Evelyn Royal
DEFENDANT apt 5
+ 2034 Bella Chase Hwy
ADDRESS
+ Leona S Scott
SURETY 340829
6437 Rue Louis Phillipe
ADDRESS
Clifford Scott
SURETY 340829
6437 Rue Louis Phillipe
ADDRESS
Phone #

FILED FOR RECORD
SEP 12 3 11 PM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA

Verbal order of Hon. Wilty Judge, Justice Of Peace Court, received by Dep E Stell at 10:30AM, and verified by State on 9/11/86 at

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep. W. Chason
DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED

Form No. B-002
Rev. 5-77

Rome Craig 9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Craig J. Rome having been arrested for the crime of
R.S. 14-122, R.S. 14-56

and having been admitted to bail in the sum of Four Thousand
Dollars ($ 4000.00) by order of the Hon. J.D. Portecus, Judge of
the 24th Judicial District Court for the Parish of Jefferson,
I, ~~Geo~~ Elwood R. Rome of 823 3rd St. Harvey, La.
I, Verna S. Rome of 823 3rd St. Harvey, La.
hereby undertake that the above named Craig J. Rome
will appear at all stages of the proceedings in the 24th Judicial District
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Four Thousand
Dollars ($ 4000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial District COURT ON
THE _____ DAY OF _____, 19__ AT _____ A.M.
TO BE Notified

BOND NO. 105934 D
COMPLAINT NO. I 690486
DATE _____
DEPOSIT NO _____
DATE OF BIRTH 5-16-60
ARREST DATE 9-11-86 PLACE W/B
RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Craig J Rome
DEFENDANT
823 Third avenue
ADDRESS
Verna Rome 341-9154
SURETY
823-3rd ave.
ADDRESS
Elwood Rome Sr
SURETY
823 3rd ave
ADDRESS
Phone # 341-9154

PARISH CLERK'S OFFICE JEFFERSON LA. 12 3 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

Verbal order of Hon. Judge Wiley Judge, 1st Justice of the Peace Court, received by _____ at _____, and verified by _____ on _____ at _____.

R.O.R.
NOTIFY - R.O.R.
ROOM 806

DEPUTY SHERIFF

CLERK OF COURT

SEP 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

Form No. 8-002
Rev. 5-77

Rivere, Barry D
9-8-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH Judicial COURT

09092

PERSONAL SURETY BAIL UNDERTAKING

Barry D. Rivere having been arrested for the crime of
RS 14:60 (aggravated Burglary)

and having been admitted to bail in the sum of fifteen thousand
Dollars ($ 15,000.00) by order of the Hon. Perteaux, Judge of
the 24TH Judicial Court for the Parish of Jefferson,
I, Ruby R. Rivere of 109 Iota St. Belle Chasse, La.
Barry D. Rivere of 109 Iota St. Belle Chasse, La.
hereby undertake that the above named Barry D. Rivere
will appear at all stages of the proceedings in the 24TH Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of fifteen Thousand
Dollars ($ 15,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH Judicial COURT ON
THE To Be DAY OF Notified, 19 AT A.M.

BOND NO. 105850
COMPLAINT NO. I0487986
DATE
DEPOSIT NO.
DATE OF BIRTH 08-08-63
ARREST DATE 9-8-86 PLACE Harvey
RELEASE DATE 9-9-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Barry D. Rivere
DEFENDANT
x 109 IOTA St. LA
ADDRESS
x Ruby Rivere
SURETY
x 109 Iota St. Belle Chasse, La. 70037
394-0834 ADDRESS
x Barry D. Rivere
SURETY
x 109 Iota St Belle Chasse, La
ADDRESS
Phone 394-0834

Verbal order of Hon. Perteaux Judge, 24TH Judicial
Court, received by J Cole on
at , and verified by
on at

FILED FOR RECORD
SEP 07 AM '86
CLERK OF COURT

J Cole
DEPUTY SHERIFF

RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE
SEP 1986

Form No. B-002
Rev. 5-77

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Reed Henry 9-10-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

PERSONAL SURETY BAIL UNDERTAKING

HENRY A REED having been arrested for the crime of ILLEGAL POSSESSION AND INTENT TO DISTRIBUTE HEROIN

and having been admitted to bail in the sum of **TWENTY-FVIE-THOUSAND** Dollars ($ 25,000.00) by order of the Hon. JD. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, CHARLES REED JR. of 3346 DESIRE ST APT #B NEW ORLEANS LOUISIANA

I, _____ of _____

hereby undertake that the above named HENRY A REED.

will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **TWENTY-FIVE-THOUSAND Dollars ($ 25,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

** TO BE NOTIFIED**

BOND NO. 105939-D

COMPLAINT NO. I- 466 86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 10-26-43 N/M

ARREST DATE 9-10-86 PLACE KENNER

RELEASE DATE 9-10-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Henry A. Reed
DEFENDANT

3346 Desire St Apt #B
ADDRESS

New Orleans LA 70126

944-2590
ADDRESS

Charles Reed
SURETY

3346 Desire St Apt. B.
ADDRESS

Phone #
944-2596

FILED FOR RECORD
SEP 12 11 41 AM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. JD. T. PORTEOUS Judge, 24TH JUDICIAL DISTRICT Court, received by DEP. R. DUCOMBS at _____, and verified at _____ on _____

Dep E. Stall
DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED
SHERIFF'S OFFICE

Form No. 8-002
Rev 5-77

Robinson, Kevin
9-9-86

0 9 1 2 8 6 0 0 0 2 7

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Kevin Robinson having been arrested for the crime of 14:62, 62

and having been admitted to bail in the sum of Ten Thousand
Dollars ($ 10,000 cc) by order of the Hon. Patterson, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Margie H. Robinson of 2004 Baronne St, NOLA
I, of
hereby undertake that the above named Kevin Robinson
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Ten Thousand
Dollars ($ 10,000 cc) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE ____ DAY OF ____, 19__ AT ____ A.M.
To Be Notified

BOND NO. 105868D
COMPLAINT NO. I 52014 86
DATE
DEPOSIT NO.
DATE OF BIRTH 3/10/68
ARREST DATE 9/8/86 PLACE W/B
RELEASE DATE 9/9/86 PLACE 1st Pct

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

* Kevin Robinson
DEFENDANT
* 2004 Baronne St. NO (522-3333)
ADDRESS
Margie Robinson
SURETY
2004 Baronne St.
ADDRESS

ADDRESS

FILED FOR RECORD
Sep 11 11 17 AM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. Wiley
Justice M. Peace Court, received by Dep. R. Auld on
9/9/86 at 10:30AM, and verified by
Time
on at

SEP 10 86
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Dep. R. Auld
DEPUTY SHERIFF

CLERK OF COURT

Form No. 8-002
Rev. 5-77

Riddle, Susan
9-13-86

0916060 1034

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

SUSAN R. RIDDLE having been arrested for the crime of
RS 14-72

and having been admitted to bail in the sum of TWENTY FIVE HUNDRED
Dollars ($2500 ^{00}) by order of the Hon. JD. PASTOUS, Judge of
the 24TH JUDICIAL Court for the Parish of Jefferson,
I, NELWYN A RIDDLE of 407 BRUCE AV GRETNA LA
I, _____ of _____
hereby undertake that the above named SUSAN R. RIDDLE
will appear at all stages of the proceedings in the 24TH JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY FIVE HUNDRED
Dollars ($2500 ^{00}) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON
THE TO BE DAY OF NOTIFIED, 19____ AT _____ A.M.

BOND NO. 105997D
COMPLAINT NO. I 50669 86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 6-19-61
ARREST DATE 9-12-86 PLACE VB
RELEASE DATE 9-13-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Susan Riddle
DEFENDANT
X 407 Bruce Ave.
ADDRESS
X Nelwyn A. Riddle
SURETY
X 407 Bruce Ave - Gretna
ADDRESS

SURETY

ADDRESS

Verbal order of Hon. JD Pastous Judge, 24TH JUDICIAL
Court, received by Dep J. Pourciau
9-13-86 at 12:05 Hrs, and verified by
on at

SEP 15 9 PM '86
FILED
CLERK OF COURT

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Reyes Cristina 9-14-86

B-77

0 9 1 6 0 6 0 1 0 3 3

STATE OF LOUISIANA
PARISH OF JEFFERSON 24th Judicial **COURT**

I, Cristina Reyes (NAME)

Of 2758 Panama Apt B (STREET ADDRESS) Kenner (CITY) La. (STATE)

Having been arrested for the crime(s) of: RS 14-34 Aggravated Battery

and having been admitted to bail in the sum of Thirty five Hundred Dollars ($ 3500.00) by order of the Hon. J.D. Porteous Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 106031-D
COMPLAINT NO. J899886
DATE
DEPOSIT NO.
DATE OF BIRTH 6-14-60
ARREST DATE 9-14-86 PLACE Kenner
RELEASE DATE 91486 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Thirty five hundred Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____, 19 AT _____ A.M.

TO BE NOTIFIED

Cristina Reyes
DEFENDANT

2758 Panama Apt B
ADDRESS

Verbal order of Hon. Judge Porteous, Judge, 24th Judicial Court, received by Dep Clerk on 9-14-86 at 10:45 AM, and verified by _____ on _____ at _____

Dep S
DEPUTY SHERIFF

SEP 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

Savarino Anthony
9-8-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, SAVARINO, Anthony J.
(NAME)
Of 3508 Bore St. - Metairie, LA.
(STREET ADDRESS) CITY STATE
Having been arrested for the crime(s) of: R.S. 14-67.A
and having been admitted to bail in the sum of Twenty Five Hundred Dollars
($ 2500.00) by order of the Hon. Porteous Judge of the
24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 65945-A
COMPLAINT NO. H-16569-86
DATE
DEPOSIT NO.
DATE OF BIRTH 10-03-60
ARREST DATE 9-8-86 PLACE 3508 Bore St.
RELEASE DATE 9-8-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Twenty Five Hundred Dollars ($2500.00) after said bail has been forfeited in accordance with the law.

FILED SEP 12 15 PM 86 RECORD
CLERK OF COURT PARISH OF JEFFERSON LA.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of XXXXXXXXXX Dollars ($ XXXXXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE When DAY OF Notified, 19 AT A.M.

x Anthony Savarino DEFENDANT x 3508 Bore St. Met. LA. ADDRESS

Verbal order of Hon. Judge G. Thomas Porteous, Judge,
24th Judicial Court, received by Dep. A.H. Bourne on
09-08-86 at 6:30 P.M. and verified by
SAME on SAME

Deputy Clerk Bourne
DEPUTY CLERK

SEP 1986 RECEIPT CLERK'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Waguespack Catherine 9-12-86

Rev 5-77

0 9 1 6 0 6 0 1 0 4 5

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, Catherine Waguespack (NAME)

of 2421 Nebraska St. (STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: 14:122, 103, 59, 108, 34.2

and having been admitted to bail in the sum of One Thousand Nine Hundred Fifty Dollars ($ 1,950.00) by order of the Hon. Fontenot Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 105965D

COMPLAINT NO I759686

DATE

DEPOSIT NO

DATE OF BIRTH 7/8/58

ARREST DATE 9/12/86 PLACE E/B

RELEASE DATE 9/12/86 PLACE JPCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

One Thousand Nine Hundred Fifty If I fail to perform any of these conditions, I will pay to this Court the sum of Dollars ($ 1,950.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit ~~and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum~~ of _____ Dollars ($ _____); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with ~~the law~~.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____, 19 ___ AT _____ A.M.

To Be Notified

Grace Waguespack DEFENDANT

2421 Nebraska ADDRESS 467-1838

Verbal order of Hon. Wilty, Judge, Justice of Peace Court, received by Dep. R. on 9/12/86 at 10:00AM, and verified by Jdne on _____ at _____

Dep R Quinn DEPUTY SHERIFF

RECEIVED SEP 12 JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. 8-002
Rev 5-77

0 9 1 5 0 0 0 0

Williams Charles
9-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Charles H. Williams having been arrested for the crime of
RS 14-67(B) Theft value $115.00

and having been admitted to bail in the sum of One Thousand Five Hundred Dollars ($1,500.00) by order of the Hon. G. Thomas Porteous, Judge of the Twenty Fourth Judicial Court for the Parish of Jefferson,
I, Helen D. Bell of 1120 31st St. Kenner, La.
I, _____ of _____
hereby undertake that the above named Charles H. Williams will appear at all stages of the proceedings in the Twenty Fourth Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of One Thousand Five Hundred Dollars ($1,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE Twenty-Fourth Jud. COURT ON THE To Be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 65988-A
COMPLAINT NO. I-7116-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 09-24-62
ARREST DATE 9-11-86 PLACE 3400 N. Causeway
RELEASE DATE 9-11-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Charles Williams
DEFENDANT
1120 31st St.
ADDRESS
x Helen Bell
SURETY
x 1120 31st St
ADDRESS
SURETY
ADDRESS

FILED FOR RECORD
SEP 12 3 15 PM '86
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. G. Thomas Porteous Judge, Twenty Fourth Judicial Court, received by Dep. Ventola on 9-11-86 at 2:15pm, and verified by Same on Same at Same.

Sgt. D. Bate
DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. 8-002
Rev. 5-74

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

WILTBERGER, JOHN C. having been arrested for the crime of 14:62.3

and having been admitted to bail in the sum of tenthousand Dollars ($10,000.00) by order of the Hon. PORTEOUS, Judge of the 24th JUDICIAL Court for the Parish of Jefferson,

I, WILTBERGER, VIOLA of 1931 KENTUCKY AVENUE KENNER, LA. 70062

I, of

hereby undertake that the above named WILTBERGER, JOHN C. will appear at all stages of the proceedings in the 24th JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of tenthous and Dollars ($10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON THE TO BE DAY OF , 19 AT NOTIFIED A.M.

BOND NO. 1059430

COMPLAINT NO. I0682486

DATE 9-11-86

DEPOSIT NO.

DATE OF BIRTH 12-31-51

ARREST DATE 9-10-86 PLACE 4th

RELEASE DATE 9-11-86 PLACE JPCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X John Wiltberger
DEFENDANT

X 1931 Kentucky Kenner 466-8295
ADDRESS

X Viola Wiltberger
SURETY

X 1931 Kentucky Ave.
ADDRESS

SURETY

ADDRESS

hm# 466-8295

WKH

FILED FOR RECORD
SEP 12 3:14 PM 1986
PARISH OF JEFFERSON, LA.

Verbal order of Hon. PORTEOUS Judge.
24th JUDICIAL Court, received by DEPUTY TATE on
9-11-86 at , and verified by
on at .

Karla Smith
DEPUTY SHERIFF

CLERK OF COURT

SEP 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

Williamson, Peggy D
9-9-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

D 2 1 2 0 6 0 0 0 3 0

24th JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

Peggy L. Williamson having been arrested for the crime of
RS 14- 27/31

and having been admitted to bail in the sum of Twelve Thousand five hundred
Dollars ($12,500.00) by order of the Hon. Porteous, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, James W. Williamson of 526 16th St. St. Gretna, La
I, _____ of _____
hereby undertake that the above named Peggy L. Williamson
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Twelve Thousand five hundred
Dollars ($12,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON
THE XXXX DAY OF XXXXXX, 19XX AT XXXX A.M.
TO BE NOTIFIED

BOND NO. 10 5882-D

COMPLAINT NO. I50490-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 01-25-58 W/F

ARREST DATE 9-9-86 PLACE W.B

RELEASE DATE 9-9-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Peggy Lee Williamson
DEFENDANT
730 W 5th St Gretna
ADDRESS

SURETY
ADDRESS

SURETY
526 16th St. Lot Gretna, La
ADDRESS
PHONE 368-8432

FILED FOR RECORD
SEP 11 11 28 AM 86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. Porteous Judge, 24th Judicial
Court, received by _____
at _____, and verified by
on _____ at _____.

ALSO HAS COMMERCIAL BOND

DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
SEP 1986
CRIMINAL COURTS
CLERK'S OFFICE

Form No. 8-002
Rev. 5-77

Westgaard, Keith 9-8-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 6 0 1 9 1 9 24th dist COURT

PERSONAL SURETY BAIL UNDERTAKING

KEITH A WESTGARD having been arrested for the crime of
UNAUTHORIZED ENTRY INHABITED DWELLING

and having been admitted to bail in the sum of SEVENTY FIVE HUNDRED Dollars ($7500.00) by order of the Hon. THOMAS PORTEOUS, Judge of the 24th dsit Court for the Parish of Jefferson,

I, BETH A WESTGAARD of 1354 W ESPLANADE AVE APT N KENNER, LA.

I, MARY C WESTGAARD of 315 KEENEY AVE LAFAYETTE, LA.

hereby undertake that the above named KEITH A WESTGAARD will appear at all stages of the proceedings in the 24th dsit Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of SEVENTY FIVE HUNDRED Dollars ($ 7500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

TO BENOTIFIED

BOND NO 105 843

COMPLAINT NO. I4503-86

DATE

DEPOSIT NO.

DATE OF BIRTH W/M 092757

ARREST DATE 9-8-86 PLACE MET, LA.

RELEASE DATE 9-8-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Keith Westgaard
DEFENDANT

X 601 VINTAGE DR #218C KENNER LA
ADDRESS

X Beth Westgaard
SURETY

X 601 Vintage Dr. #218C Kenner La 70065
ADDRESS

XX Mary C. Westgaard
SURETY

XX 315 Keeney Ave
ADDRESS

PHONE 464-1259

FILED FOR RECORD
SEP 9 11 08 AM 86
CLERK OF COURT
PARISH OF JEFFERSON LA

Verbal order of Hon. VERNON WILTY 221 ROR Judge, JUSTICE OF THE PEACE Court, received by SGT JCAMBE on 9-8-86 at JPCCC, and verified by SGTJCAMBE on 9-8-86 at :215 PM.

SEP 1986
RECEIVED
DEPUTY SHERIFF'S OFFICE
SGTJCAMBE

CLERK OF COURT

Overdue Warrant 2-16-86

Form No. B-002
Rev. 5-77

0 2 2 4 0 6 0 0 9 1 9

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dcait **COURT**

PERSONAL SURETY BAIL UNDERTAKING

MARVIN R AREVALO having been arrested for the crime of
SIMPLERAPR

and having been admitted to bail in the sum of FIFTEEN THOUSAND
Dollars ($ 15,000.00) by order of the Hon. G.THOMAS PORTEOUS, Judge of
the 24th dcait Court for the Parish of Jefferson,
I, ~~NORMA E GUILLO of 2209 W ESPLANADE ST KENNER,LA. 70065-0000~~
I, of
hereby undertake that the above named MARVIN R AREVALO
will appear at all stages of the proceedings in the 24th dist
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIFTEEN THOUSAND Dollars ($15,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dcit COURT ON
THE DAY OF , 19 AT A.M.
TO BENOTIFIED

BOND NO. 99634-D
COMPLAINT NO B10543-86
DATE
DEPOSIT NO.
DATE OF BIRTH W/M 032361
ARREST DATE 2-14-86 PLACE KENNER
RELEASE DATE 2-16-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Y MARVIN R AREVALO
DEFENDANT 443-4087
X 2209 W Esplanade I-4
ADDRESS
XX Norma E Guillo
SURETY
XX 2209 W Esplanade I-4
Kenner La 70065
ADDRESS
PHONE 443 40 87
SURETY
ADDRESS

FILED FOR RECORD
FEB 19 10 26 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24thdcit
Court, received by SGT J CAMBRE on
2-16-86 at JPCCC, and verified by
SGT J CAMBRE on 2-16-86 at 700 PM.

ALSO HAS COMM BOND 10.000.00

SGT J CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

002003

Form No. B-002
Rev. 6-77

Ancar, Bruce
2-18-86

STATE OF LOUISIANA 24B60091.7
PARISH OF JEFFERSON 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

I, BRUCE A. ANCAR having been arrested for the crime of R.S. 14-71 ✓ R.S. 14-72

and having been admitted to bail in the sum of Thirty Five Hundred Dollars ($ 3500.00) by order of the Hon. Judge Porteous, Judge of the 24th Judical Court for the Parish of Jefferson, I, ANCAR, HARVEY J. of 3524 MARIETTA DE-CHALMETTE, LA. I, _____ of _____ hereby undertake that the above named ANCAR, BRUCE A. will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Thirty Five hundred Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE When DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 63570-A
COMPLAINT NO. B-13049-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 07-05-50
ARREST DATE 2-18-86 PLACE 4436 Dets. Hwy.
RELEASE DATE 2-18-86 PLACE J.P.S.O.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

/ Bruce Ancar
DEFENDANT
2709 David Drive (met 7003)
ADDRESS
x Harvey J. Ancar
SURETY
x 3524 Marietta De. Chal.
ADDRESS

SURETY
ADDRESS

FILED FOR RECORD
FEB 21 9 33 AM 1986
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. Judge Porteous Judge, 24th Judicial Court, received by Deputy Alice Bouvier on 02-18-86 at 3:15 P.M., and verified by Same on Same at Same

Deputy Alice
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
FEB 18 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

Anselmo, Anthony Jr.
2-14-86

Form No. B-002
Rev. 5-77

0 2 2 4 8 6 0 0 9 2 0

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th. JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

ANTHONY L. ANSELMO JR. having been arrested for the crime of ILLEGAL POSSESSION OF STOLEN THINGS.

and having been admitted to bail in the sum of TWENTY-FIVE HUNDRED Dollars ($ 2500.00) by order of the Hon. Jd. T. PORTEOUS, Judge of the 24th. JUDICIAL DISTRICT Court for the Parish of Jefferson, I, BEVERLY L. ANSELMO of 3102 IDAHO AVE. KENNER, LA

I, _____ of _____

hereby undertake that the above named ANTHONY L. ANSELMO JR. will appear at all stages of the proceedings in the 24th. JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY-FIVE HUNDRED Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th. JUDICIAL COURT ON THE _____ DAY OF _____, 19___ AT ___ A.M. TO BE NOTIFIED

BOND NO. 99636-D

COMPLAINT NO. B2335186

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 10-10-66 W/M

ARREST DATE 02-14-86 PLACE E/B

RELEASE DATE 02-16-86 PLACE JPCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Tony Anselmo
DEFENDANT

x 3102 Idaho Ave
ADDRESS

x Beverly L. Anselmo
SURETY

x 3102 Idaho Ave
Kenner, La 70065
PHONE: 443-3585
SURETY

ADDRESS

FILED FOR RECORD
FEB 19 10 25 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. Jd. T. PORTEOUS Judge, 24th. JUDICIAL DISTRICT Court, received by Sgt. J. CAMARE on 02-16-86 at JPCC, and verified by SAME on SAME at _____

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

x Sgt J Camare
DEPUTY SHERIFF

CLERK OF COURT

0 2 1 9 0 6 0 2 9 3 9

Form No. 8-002
Rev. 5-77

Agoff Charles 2-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dstr **COURT**

PERSONAL SURETY BAIL UNDERTAKING

CHARLES J AGOFF having been arrested for the crime of
UNAUTHORIZED USE OF A VEHICLE

and having been admitted to bail in the sum of TWENTY FIVE HUNDRED
Dollars ($ 2500.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of
the 24th dstr Court for the Parish of Jefferson,
I, FAYE W AGOFF of BOX 430 HWY 301 BARATARIA,LA.
I, of
hereby undertake that the above named CHARLES J AGOFF
will appear at all stages of the proceedings in the 24th dstr
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY FIVE HUNDRED Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dstr COURT ON
THE DAY OF , 19 AT A.M.

BOND NO. 99494-B TO B NOTIFIED

COMPLAINT NO. B50715-86

DATE

DEPOSIT NO.

DATE OF BIRTH W/M 031165

ARREST DATE 2-11-86 PLACE GRETNA

RELEASE DATE 2-11-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Charles Agoff
DEFENDANT

R#Box 388 Marrero 70072
ADDRESS

XX Faye W. Agoff
SURETY

XX Rt 1 Box 388 Marrero 70072
ADDRESS

PHONE 689-3111
SURETY

ADDRESS

FILED
FEB 27 AM '86
CLERK OF COURT
RECORD

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24th dstr
Court, received by SGT J CAMBRE on
at , and verified by
on at .

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

ST J CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

Bethay, Maylon
2-14-86

Rev. 5-77

0 2 2 4 0 6 0 0 9 3 2

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th. JUDICIAL COURT

I, MAYLON BETHAY
(NAME)

Of 5812 LACOMB DR. MARRERO, LA
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: WARRANT. CRUELTY TO ANIMALS
and having been admitted to bail in the sum of ONE THOUSAND Dollars
($ 1000 00) by order of the Hon. Jd. T. PORTEOUS Judge of the
24th. JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th. JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 9958/-D
COMPLAINT NO. B0182486
DATE
DEPOSIT NO.
DATE OF BIRTH 08-18-29 W/M
ARREST DATE 02-14-86 PLACE W/B
RELEASE DATE 02-14-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

FILED FOR RECORD
FEB 19 19 86 AM
DY. CLERK OF COURT
PARISH OF JEFFERSON, LA.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of ONE THOUSAND Dollars ($ 1000 00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($ _____); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th. JUDICIAL COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M.
TO BE NOTIFIED

x M. Bethay 5812 Lacomb 347-7572
DEFENDANT ADDRESS

Verbal order of Hon. Jd. T. PORTEOUS, Judge,
24th. JUDICIAL Court, received by DEP. R. DUCOMBS on
02-14-86 at JPCC, and verified by
SAME on SAME at

x Dep R Ducombs
DEPUTY SHERIFF

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

Barrios, Joseph
24-8

Form No. B-002 0224060093 1

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th. JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

JOSEPH A. BARRIOS having been arrested for the crime of THEFT

and having been admitted to bail in the sum of TWENTY-FIVE HUNDRED Dollars ($ 2500.00) by order of the Hon. JD. T. PORTEOUS, Judge of the 24th. JUDICIAL DISTRICT Court for the Parish of Jefferson, I, SUSAN P. BARRIOS of 2620 BAY ADAMS DR. MARRERO, LA

I, _____ of _____

hereby undertake that the above named JOSEPH A. BARRIOS will appear at all stages of the proceedings in the 24th. JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY-FIVE HUNDRED Dollars ($ 2,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th. JUDICIAL COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M.

TO BE NOTIFIED

FILED FOR RECORD
FEB 15 10 26 AM '86
CLERK OF COURT
CLERK OF COURT
JEFFERSON, LA.

BOND NO. 99580-D

COMPLAINT NO. B0994786

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 06-12-67 W/M

ARREST DATE 02-14-86 PLACE W/B

RELEASE DATE 02-14-86 PLACE JPCC

Joseph Barrios
DEFENDANT

2620 Bay Adams Dr
ADDRESS MARRERO

436-47-9451
SURETY

ADDRESS

Susan Barrios
SURETY

2620 Bay Adams Dr.
ADDRESS Marrero

PHONE 347-1797

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Verbal order of Hon. JD. T. PORTEOUS Judge, 24th. JUDICIAL DISTRICT Court, received by DEP. R. DUCAMES on 02-14-86 at JPCC, and verified by SAME on SAME at _____

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Dep R Ducames
DEPUTY SHERIFF

CLERK OF COURT

Barattini, Darrell A
2-14-86

Form No. B-002
Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

0 2 2 4 8 6 0 0 2 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Darrell A. Barattini w/m having been arrested for the crime of RS 14:67.8, 69.B

and having been admitted to bail in the sum of Seven Thousand Dollars ($ 7,000.00) by order of the Hon. Fortenna, Judge of the 24th Judicial Court for the Parish of Jefferson, I, Louis Bartels I of 4742 Folse Dr., Metairie, La

I, _____ of _____

hereby undertake that the above named Darrell A. Barattini will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Seven Thousand Dollars ($ 7,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M.
To be Notified

BOND NO. 99571-D

COMPLAINT NO. B570086

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 10/01/50

ARREST DATE 2/14/86 PLACE G/B

RELEASE DATE 2/14/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Darrell A Barattini
DEFENDANT

X 601 Harang Ave.
ADDRESS

X Louis Bartels
SURETY

X 4742 Folse Drive Met. La 70006
ADDRESS

ph # 888 0527
SURETY

ADDRESS

FILED FOR RECORD
FEB 13 10 25 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. Wilby Justice of Peace Court, received by _____ on _____ at _____, and verified by _____ on _____ at _____

FEB 1986
RECEIVED
JEFFERSON-PARISH
SHERIFF'S OFFICE

Deputy Sheriff

CLERK OF COURT

Bartley Robert C
2-25-86

0 2 2 8 0 6 0 0 7 7 7

Form No. B-002
Rev. 5-85

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

BARTLEY, ROBERT C having been arrested for the crime of

and having been admitted to bail in the sum of TWENTY TWO THOUSAND Dollars ($22,000.00) by order of the Hon. J.D. PORTEOUS, Judge of the 24TH JUDICIAL Court for the Parish of Jefferson,
I, FRANK BARTLEY of 1213 MARTIN DR MARRERO, LA.
I, DIANN J. DABNEY of 2049 BETTY BLVD MARRERO, LA
hereby undertake that the above named ROBERT C. BARTLEY
will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY TWO Dollars ($22,000.00) after said bail has been forfeited in accordance with the law. THOUSAND

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE ____ DAY OF ____, 19____ AT ____ A.M. TO BE NOTIFIED

BOND NO. 99924-D
COMPLAINT NO. B-50691-86
DATE 2/25/86
DEPOSIT NO. ____
DATE OF BIRTH 3/10/54
ARREST DATE 2/11/86 PLACE GRETNA
RELEASE DATE 2/25/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Robert C Bartley
DEFENDANT
1213 Martin Marrero
ADDRESS
xx Frank Bartley 348-2860
SURETY
xx 1213 Martin Dr.
ADDRESS
x Diann Dabney
SURETY
x 2049 Betty Blvd
ADDRESS
x 348-2860
PH

Verbal order of Hon. J.D. CANNELLA Judge,
24TH JUDICIAL Court, received by DEP. J. GARCIA on
2/24/86 at 11:30 AM and verified by
on at

FILED FOR RECORD
FEB 25 12 PM 1986
CLERK OF COURT
JEFFERSON PARISH, LA.

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Bonvillian, Ronald
2-16-86

Form No. B-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judical COURT

PERSONAL SURETY BAIL UNDERTAKING

Bonvillian, Ronald J WM having been arrested for the crime of RS 14-69. B

and having been admitted to bail in the sum of Two thousand five hundred Dollars ($ 2,500.00) by order of the Hon. Porteous, Judge of the 24th Judical Court for the Parish of Jefferson,

I, Dale S. Boudreaux of 3317 Colorado Ave Kenner, La

I, _____ of _____

hereby undertake that the above named Ronald J Bonvillian will appear at all stages of the proceedings in the 24th Judical Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of _____ Dollars ($ 2,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judical COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

To Be Notified

BOND NO. 99642-D

COMPLAINT NO. B-3351-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 10-27-65

ARREST DATE 2-14-86 PLACE Kenner

RELEASE DATE 2-16-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Ronald Bonvillian
DEFENDANT

x 3317 Colorado Ave Kenner La.
ADDRESS

x Dale Boudreaux
SURETY

x 3317 Colorado Ave. Kenner La.
ADDRESS

PHONE # 467-1255
SURETY

ADDRESS

FILED FOR RECORD
FEB 19 10 26 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. Porteous Judge, 24th Judical Court, received by Sgt J Cambre on 2-16-86 at _____, and verified by _____ on _____ at _____

Dep J Nichols
DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Craft, Jerome
2-4-86

Form No. B-002
Rev. 6-83

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

JEROME CRAFT having been arrested for the crime of
14:27/30 2counts

and having been admitted to bail in the sum of FIFTY THOUSAND DOLLARS
Dollars ($ 50,000.00) by order of the Hon. PORTEOUS, Judge of
the 24 TH JUDICIAL Court for the Parish of Jefferson,
I, LEE CRAFT of 1303 GARDEN RD MARRERO LA
I, FRANCES T CRAFT of 1303 GARDEN RD MARRERO LA
hereby undertake that the above named JEROME CRAFT
will appear at all stages of the proceedings in the 24 TH JUDICAIL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIFTY THOUSAND Dollars ($ 50,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24 TH JUDICIAL COURT ON
THE _____ DAY OF _____, 19____ AT _____ A.M.
TO BE NOTIFIED

BOND NO. 99569D

COMPLAINT NO. B0837486

DATE 2/14/86

DEPOSIT NO. _____

DATE OF BIRTH 3/28/51

ARREST DATE 2/11/86 PLACE wbnk

RELEASE DATE 2/14/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Jerome Perry Craft
DEFENDANT
1303 Harden - marrero
ADDRESS
Lee Craft
SURETY
1303 Garden Rd. Marrero La.
ADDRESS
Frances T. Craft
SURETY
1303 Garden Rd. Marrero, La. 70072
ADDRESS

FILED FOR RECORD
Feb 19 10 26 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. PORTEOUS Judge, 24 TH JUDICAIL
Court, received by MELERINE
2/14/86 at 11:45 am, and verified by
on at

FEB 1986
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JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Coleman, Sheila B
2-27-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON 24TH JUDICIAL DISTRICT" COURT

031 1860291 9

SHEILA B. COLEMAN
(NAME)

Of 2617 DELACHAIS ST. NEW ORLEANS, LOUISIANA
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: THEFT AND FORGERY

and having been admitted to bail in the sum of **TWO-THOUSAND-FIVE-HUNDRED** Dollars ($ 2,500.00) by order of the Hon. JD. PORTEOUS Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 100012-0

COMPLAINT NO. B1866386

DATE

DEPOSIT NO.

DATE OF BIRTH 08-13-58 B/F

ARREST DATE 2-27-86 PLACE W. BANK

RELEASE DATE 2-27-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

FILED FOR RECORD
CLERK OF COURT
PARISH OF JEFFERSON, LA.
MAR 6 1 34 PM '86

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of **TWO-THOUSAND-FIVE-HUNDRED** Dollars ($ 2,500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of xxxx

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Form No. B-002
Rev. 5-77

Desoto James 2-10-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Desoto James T having been arrested for the crime of
RS 14:2262

and having been admitted to bail in the sum of Five thousand
Dollars ($ 5000), by order of the Hon. Sol Carteous, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Desoto Jane T of 824 Landee ST. Beige City LA
I, of
hereby undertake that the above named Desoto James T.
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Five thousand
Dollars ($ 5000) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE DAY OF , 19 AT A.M.

BOND NO. 79465-D TO be notified

COMPLAINT NO. B0704286

DATE

DEPOSIT NO.

DATE OF BIRTH 02-04-59

ARREST DATE 2-10-86 PLACE

RELEASE DATE 2-10-86 PLACE 5/CC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

James DeSoto
DEFENDANT Beige City
780 Lander St 436-6867
ADDRESS
Jane T. DeSoto
SURETY
824 Lander St.
ADDRESS
phone# 436-6867
SURETY
ADDRESS

Verbal order of Hon. Sol Wilty Judge, 1st Justice
of the Peace Court, received by on
2-10-86 at 12 00pm, and verified by
on at .

DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

Deary Allison Jr. 2-12-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 2 2 4 8 6 0 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Allison DeAN Jr. having been arrested for the crime of R.S. 14-34- Aggravated Battery

and having been admitted to bail in the sum of Five Thousand Dollars ($5,000.00) by order of the Hon. Judge G.T. Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson, I, Rev. Terry Sippo of 3734 Earhart Blvd. - New Orleans, LA.

I, _____ of _____

hereby undertake that the above named Allison DeAN JR. will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Five Thousand Dollars ($5,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE When DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 63504-A
COMPLAINT NO. B-7601-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 02-19-60
ARREST DATE 2-12-86 PLACE 3391 Met. Rd.
RELEASE DATE 2-12-86 PLACE J.P.S.O.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Allison Dean III
DEFENDANT
+3632½ Thalia, NOLA
ADDRESS
X Rev. Terry Sippo
SURETY
X3734 Earhart Blvd
ADDRESS

SURETY
ADDRESS

FILED FOR RECORD
FEB 19 10 27 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. Judge Porteous, Judge, 24th Judicial Court, received by Deputy Alvie Bourelle on 02-12-86 at Same, and verified by Same on Same at Same

Deputy Alvie Bourelle
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
FEB 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

Dupont, Cathy
2-15-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 2 4 8 6 0 Div. 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Cathy A. Dupont having been arrested for the crime of
RS 14:67.F Theft by shoplifting value $239.98

and having been admitted to bail in the sum of One Thousand Five Hundred
Dollars ($ 1,500.00) by order of the Hon. G. Thomas Porteous, Judge of
the Twenty-Fourth Judicial Court for the Parish of Jefferson,
I, Edward S. Nelson of 4828 Zenith Met. La. Apt. 203
I, _____ of _____
hereby undertake that the above named Cathy A. Dupont
will appear at all stages of the proceedings in the Twenty-Fourth Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of One Thousand Five Hundred
Dollars ($ 1,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE Twenty-Fourth Judicial COURT ON
THE To Be DAY OF Notified, 19____ AT____ A.M.

BOND NO. 63536-A
COMPLAINT NO. B-11220-86
DATE_____
DEPOSIT NO._____
DATE OF BIRTH 05-20-44
ARREST DATE 2-15-86 PLACE 1250 S. Clearview
RELEASE DATE 2-15-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Cathy Dupont
DEFENDANT
x 717 Stewart Ave.
ADDRESS
River Ridge, La. 70123
x Edward S Nelson
SURETY
x 4828 Zenith 203
ADDRESS
Metairie LA 70001
SURETY
ADDRESS

FILED FOR RECORD
FEB 19 10 27 AM
CLERK OF COURT
PARISH OF JEFFERSON

Verbal order of Hon. G. Thomas Porteous Judge, Twenty-Fourth Judicial Court, received by Dep. H. Bourne on 2-15-86 at 6:10pm, and verified by Same on Same at Same

Sgt. D. Bourne
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
FEB 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

Flake, Allen D
2-3-86

Form No. 8-002
Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING 00207

Flake Allen D having been arrested for the crime of
RS 14:67 A

and having been admitted to bail in the sum of Ten Thousand
Dollars ($ 10,000.00) by order of the Hon. Jo. Cooper Porteous Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Leone Flake of 3701 Wanda Lynn Dr. Metairie, La.
I, Allen D Flake of 3701 Wanda Lynn Dr. Metairie, La.
hereby undertake that the above named Flake Allen
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Ten Thousand
Dollars ($ 10,000) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial Dist COURT ON
THE _____ DAY OF _____ 19 _____ AT _____ A.M.
TO BE NOTIFIED

BOND NO. 99224-D
COMPLAINT NO. J-5790-85
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 4-11-30 W/M
ARREST DATE 2-3-86 PLACE _____
RELEASE DATE 2-3-86 PLACE 5 AC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Allen D. Flake
DEFENDANT
3701 Wanda Lynn Dr.
x Metairie, La 70002
ADDRESS

x Mrs. Leone Flake
SURETY
3701 Wanda Lynn Dr.
x Metairie, La. 70002
ADDRESS
Phone # 887-7050

x Allen D. Flake
SURETY
3701 WANDA LYNN DR.
x Metairie, La 70002
ADDRESS

'87 FEB 3 PM 8:05
CLERK OF RECORD

Verbal order of Hon. Jo. Cooper Porteous Judge, 24th Judicial
24th Judicial Court, received by _____ on
_____ at _____, and verified by
_____ on _____ at _____.

Dep. E. Hall
DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Frame Tom 2-10-86

Form No. B-002
Rev. 5-77

0 2 1 9 0 6 0 2 9 7 9

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

FRAME Tom D. having been arrested for the crime of
RS 14-27-62

and having been admitted to bail in the sum of Five Thousand
Dollars ($ 5000) by order of the Hon. St. Pierre, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, FRAME CAROLYN of 225 8th ST. Bridge City, LA
I, _____ of _____
hereby undertake that the above named FRAME TOM
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Five Thousand
Dollars ($ 5000) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE _____ DAY OF _____, 19__ AT _____ A.M.
To be notified

BOND NO. 99463-D
COMPLAINT NO. 607047 86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 09-28-61
ARREST DATE 2-10-86 PLACE _____
RELEASE DATE 2-10-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Tom D. Frame
DEFENDANT
X 225 8th St Bridge City 436-10
ADDRESS
X Mrs Carolyn Frame
SURETY
X 225 8th St. Bridge City
ADDRESS
phone 436-1073
SURETY
ADDRESS

Verbal order of Hon. St Pierre Judge 1st Judicial
at the Peace Court, received by Dep E Still on
2-10-86 at 12:00 PM, and verified by
on _____ at _____.

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep E Still
DEPUTY SHERIFF

CLERK OF COURT

RECORD 2-10-86 11:27 AM

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. 6-002
Rev. 5-77

Faulora Justin
2-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON A 0 6 0 0 9 5 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Justin Faulora having been arrested for the crime of
RS 40-969- Possession of Valium

and having been admitted to bail in the sum of Five Thousand
Dollars ($ 5,000.00) by order of the Hon. C. Thomas Porteous, Judge of
the Twenty-Fourth Judicial Court for the Parish of Jefferson,
I, Peggy B. Faulora of 3445 W. Loyola Dr.
I, _____ of _____
hereby undertake that the above named Justin M. Justin JR
will appear at all stages of the proceedings in the Twenty-Fourth Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Five Thousand
Dollars ($ 5000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE Twenty-Fourth Jud COURT ON
THE TO Be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 63455-A
COMPLAINT NO. B-8221-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 05-12-49
ARREST DATE 2-11-86 PLACE 3500 19th St
RELEASE DATE 2-11-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Justin Faulora Jr.
DEFENDANT
3445 W. Loyola
ADDRESS
Peggy B. Faulora
SURETY
3445 West Loyola Dr.
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
FEB 13 10 27 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. C. Thomas Porteous Judge, 24th Judicial Court, received by Sgt. Bates on 2-11-86 at 9:30pm, and verified by Same on Same at _____.

Sgt. D. [illegible]
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
FEB 13 1986
JEFFERSON PARISH SHERIFF'S OFFICE

Gros, Chris
2-14-86

Form No. B-002
Orig. 6-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

0 2 2 4 8 6 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Chris Gros w/m having been arrested for the crime of
14:62.69.B

and having been admitted to bail in the sum of Ten Thousand
Dollars ($ 10,000.00) by order of the Hon. Porteous, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Mary Gros of 1216 East Dr., Westwego, La
I, of
hereby undertake that the above named Chris Gros
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Ten Thousand
Dollars ($ 10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE DAY OF To Be Notified 19 AT A.M.

BOND NO. 99570D
COMPLAINT NO. L8560085, B992486
DATE
DEPOSIT NO.
DATE OF BIRTH 5/9/64
ARREST DATE 2/14/86 PLACE W/B
RELEASE DATE 2/14/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Chris A. Gros
DEFENDANT
X 1211 East Drive
ADDRESS
X Mary Gros
SURETY
X 1216 East Dr.
ADDRESS
Westwego, La.
348-0844
ADDRESS

FILED FOR RECORD
FEB 19 10 27 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, L.

Verbal order of Hon. Porteous Judge,
24th Judicial Court, received by on
at , and verified by
on at .

Dep. D. Thomas
DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

Gahagan, Michael
2-10-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 0 2 2 4 0 6 0 0 0 0 6 0 **24th Judicial COURT**

PERSONAL SURETY BAIL UNDERTAKING

Michael A. GAHAGAN having been arrested for the crime of
RS 14:80 CARNAL KNOWLEDGE OF A JUVENILE

and having been admitted to bail in the sum of FIVE THOUSAND
Dollars ($ 5000 ~~00~~) by order of the Hon. G. Thomas Porteous, Judge of
the 24th JUDICIAL Court for the Parish of Jefferson,
I, MARK A. GAHAGAN of 3400 KENT AVE. #L303, METAIRIE, LA.
I, _____ of _____
hereby undertake that the above named MICHAEL A. GAHAGAN
will appear at all stages of the proceedings in the 24th JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIVE THOUSAND.
Dollars ($ 5000 ~~00~~) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE TO BE DAY OF NOVEMBER, 19 ____ AT ____ A.M.

BOND NO. 63417-A
COMPLAINT NO. B-7630-86
DATE
DEPOSIT NO.
DATE OF BIRTH 11-24-63
ARREST DATE 2-10-86 PLACE METAIRIE
RELEASE DATE 2-10-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Mike Gahagan
DEFENDANT
x 860 Papworth Ind
ADDRESS
x Mark Gahagan
SURETY
x 3400 Kent L303
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
FEB 10 10 27 AM '86
CLERK OF COURT
OF JEFFERSON, LA.

Verbal order of Hon. G. Thomas Porteous Judge, 24th
JUDICIAL Court, received by SGT. D. BATES on
2-10-86 at 1035 PM, and verified by
SAME on SAME.

FEB 1986
RECEIVED
2376

DEPUTY SHERIFF

CLERK OF COURT

Galarza, Troy A
2-19-86

Form No. B-002
Rev. 5-77

0 2 2 4 8 6 0 0 9 5 9

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Troy A Galarza having been arrested for the crime of RS 14-65, 14-92 (Worr.)

and having been admitted to bail in the sum of Six Thousand Dollars ($6,000.00) by order of the Hon. Fortunato, Judge of the 24TH Judicial Court for the Parish of Jefferson, I, Judy Galarza of 3893 Nathan Lonman Harvey, La. 70058 I, _____ of _____ hereby undertake that the above named Troy Galarza will appear at all stages of the proceedings in the 24TH Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Six Thousand Dollars ($6,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH Judicial COURT ON THE _____ DAY OF To Be Notified 19 _____ AT _____ A.M.

BOND NO. 99564-D

COMPLAINT NO. A1688586

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 1-7-68

ARREST DATE 2-13-86 PLACE _____

RELEASE DATE 2-14-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Roy Galarza
DEFENDANT

3893 Nathan Lonman
ADDRESS

Judy Galarza
SURETY

3893 Nathan Lonman
ADDRESS

348-3766
SURETY

ADDRESS

FILED FOR RECORD
FEB 19 10 27 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.
BY: _____

Verbal order of Hon. Willty, Judge, 24TH Judicial Court, received by Dep. Thompson on _____ at _____, and verified by _____ on _____ at _____

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep. D. Thompson
DEPUTY SHERIFF

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Garretts, Francis
2-15-86

Form No. B-002
Rev. 5-85

02248600965

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dcit COURT

PERSONAL SURETY BAIL UNDERTAKING

FRANCIS J GARRETTS having been arrested for the crime of
ILLEGA USE OF WEAPON POSS FIREARM BY COMVICTED FELON

and having been admitted to bail in the sum of TWENTY THOUSAND
Dollars ($ 20.000.00) by order of the Hon. G.THOMAS PORTEOUS, Judge of
the 24th sit MAGISTRATE Court for the Parish of Jefferson,
I, DEBORAH G WELLMAN of 414 COMMERCE ST GRETNA,LA.
I, of
hereby undertake that the above named FRANCIS J GARRETTS
will appear at all stages of the proceedings in the 24thdcit
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY THOUSAND Dollars ($ 20.000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th sit COURT ON
THE DAY OF TO BE NOTIFIED, 19 AT A.M.

BOND NO. 99605-D
COMPLAINT NO. B50835-86
DATE
DEPOSIT NO.
DATE OF BIRTH W/M 050951
ARREST DATE 2-14-86 PLACE GRETNA
RELEASE DATE 2-15-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

/s/ Francis Garretts
DEFENDANT
/901 Jackson St 16
ADDRESS
/s/ Deborah Wellman
SURETY
XX/661-A Alexander Dr
ADDRESS
PHONE 368 83[illegible]
SURETY
ADDRESS

FILED FOR RECORD
FEB 19 10 27 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24th sit
Court, received by SGTJ CAMBE on
at , and verified by
on at .

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

SG TJ CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

Hines, Frederick
2-15-86

Form No. 9002
Rev. 8/76

STATE OF LOUISIANA
PARISH OF JEFFERSON

0 2 2 4 0 24th Dist 0 9 6 9 COURT

PERSONAL SURETY BAIL UNDERTAKING

FREDERICK HINES having been arrested for the crime of
POSS & INTENT DIST MARIJUANA 1 OUNCE

and having been admitted to bail in the sum of THREE THOUSAND
Dollars ($ 3000.00) by order of the Hon. C. THOMAS PORTEOUS, Judge of
the 24th dsit Court for the Parish of Jefferson,
I, GLORIA HINES MOTHER of 1055 CARMADELLE ST MARRERO, LA. 70072
I, of
hereby undertake that the above named FREDERICK HINES
will appear at all stages of the proceedings in the 24th dsot
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of THREE THOUSAND
Dollars ($3000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON
THE DAY OF , 19 AT A.M.
TO BENOTIFIED

BOND NO. 99607-D

COMPLAINT NO. B10504-86

DATE

DEPOSIT NO.

DATE OF BIRTH N/M 071264

ARREST DATE 2-14-86 PLACE MARRERO

RELEASE DATE 2-15-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

+ Frederick Hines
DEFENDANT

+ 1055 Carmadelle
ADDRESS

xx Gloria Hines
SURETY

xx 1055 Carmadelle St. Mar
ADDRESS

PHONE 348-4303
SURETY

ADDRESS

FEB 15 10 27 AM '86
RECORD

Verbal order of Hon. JOHN J MOLAISON Judge, 2nd Parish
Court, received by SGTJ CAMBRE on
2-15-86 at JPCCC, and verified by
SGT J CAMBE on 2-15-86 at 3/38 PM

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

SGTJ CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

Horn Wade 2-26-86

Form No. B-002
Revised 7/85

0 2 2 8 6 6 0 0 0 3 7

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT **COURT**

PERSONAL SURETY BAIL UNDERTAKING

WADE HORN having been arrested for the crime of POSSESSION OF METHAMPHETAMINE

and having been admitted to bail in the sum of **SEVEN-THOUSAND-FIVE-HUNDRED** Dollars ($7,500.00) by order of the Hon. JD. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, DONALD J. HORN of 226 CYPRESS DRIVE DESALLEMANDS, LOUISIANA

I, of

hereby undertake that the above named WADE HORN will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **SEVEN-THOUSAND-FIVE-HUNDRED** Dollars ($ 7,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE DAY OF , 19 AT A.M.

TO BE NOTIFIED

BOND NO. 99979-D

COMPLAINT NO. B18344-86

DATE

DEPOSIT NO.

DATE OF BIRTH 2-5-55 W/M

ARREST DATE 2-26-86 PLACE W. BANK

RELEASE DATE 2-26-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

DEFENDANT

P.O. Box 235
ADDRESS

Luling, La 70070
SURETY

ADDRESS

Donald J. Horn
SURETY

226 Cypress Dr. Des.
ADDRESS

Allemands, La. 70030

Phone 785-8

FILED FOR RECORD
CLERK OF COURT
JEFFERSON PARISH, LA.
FEB 27 10 55 AM '86

Verbal order of Hon. JD. GREFER Judge, 24TH JUDICIAL DISTRICT Court, received by DEP. R. DUCOMBS on at , and verified by on at .

DEPUTY SHERIFF

RECEIVED
FEB 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Hunt, Charles
2-17-86

Form No. 8-002
Rev. 5-77

0 2 2 4 8 6 0 0 9 7 1

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Charles J. Hunt having been arrested for the crime of RS 14:62

and having been admitted to bail in the sum of Twenty Thousand Dollars ($ 20,000.00) by order of the Hon. Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson,

I, Norman J. Hunt of 1433 Helois St., Metairie

I, _____ of _____

hereby undertake that the above named Charles J. Hunt will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court, the sum of Twenty Thousand Dollars ($ 20,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____ 19__ AT _____ A.M.
To Be Notified

BOND NO. 99669D

COMPLAINT NO. 85-365

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 2/17/65

ARREST DATE 2/19/86 PLACE _____

RELEASE DATE 2/19/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Charles Hunt
DEFENDANT
1433 Helois, Met, La, 70005
ADDRESS
Norman J. Hunt Esq.
SURETY
1433 Helois St Met. La.
ADDRESS
835-5735
SURETY
ADDRESS

FILED FOR RECORD
FEB 21 9 32 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. Porteous Judge
24th Judicial Court, received by _____ on _____
at _____, and verified by _____
on _____ at _____

Deg D. Thompson
DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Jones, James 2-14-86

Rev. 5-77

0 2 2 4 8 6 0 0 9 7 3

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

I, James Jones
(NAME)
Of 3950 Bourdin St New Orleans, La.
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: RS 14:62.2 E

and having been admitted to bail in the sum of Fifteen Hundred Dollars ($ 1500.00) by order of the Hon. Peterson Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 99567-D
COMPLAINT NO. B984986
DATE
DEPOSIT NO.
DATE OF BIRTH 12-13-56
ARREST DATE 2-13-86 PLACE
RELEASE DATE 2-14-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

FILED FOR RECORD
FEB 19 10 27 AM '86
CLERK OF COURT
JEFFERSON LA.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Fifteen Hundred Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of Dollars ($); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE DAY OF 19 AT A.M.

To Be Notified

James Jones
DEFENDANT

3950 Bourdin St
ADDRESS

Verbal order of Hon. Wilty, Judge, 24th Judicial Court, received by Dep. Thompson on at , and verified by on at

Dep D Thompson
DEPUTY SHERIFF

RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE
FEB 1986

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

0 2 1 9 8 6 0 2 9 9 0

Form No. 8-002
Rev. 5-77

Jordan, Timothy
2-10-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

PERSONAL SURETY BAIL UNDERTAKING

TIMOTHY J JORDAN having been arrested for the crime of SIMPLE BRUGALRY WARRANT

and having been admitted to bail in the sum of TEN THOUSAND Dollars ($ 10.000.00) by order of the Hon. G.THOMAS PORTEOUS, Judge of the 24th dsit Court for the Parish of Jefferson,

I, ALBERT C JORDAN JR of 176 FELICIA DR WESTWEGO,LA. 70094-0000

I, of

hereby undertake that the above named TIMOTHY J JRDAN will appear at all stages of the proceedings in the 24th dsit Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TEN THOUSAND Dollars ($ 10.000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE DAY OF , 19 AT A.M.

TO BENOTIFIED

BOND NO. 99473=D

COMPLAINT NO. B4510-85

DATE

DEPOSIT NO.

DATE OF BIRTH W/M 090660

ARREST DATE 2-9-86 PLACE MET,LA.

RELEASE DATE 2-10-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Timothy Jordan
DEFENDANT

5133 Dwelling Dr
ADDRESS

XX Albert C Jordan
SURETY

XX 176 Felicia Dr.
ADDRESS

PHONE 436-8826
SURETY

ADDRESS

Verbal order of Hon. G.THOMAS PORTEOUS Judge, 24th dsit MAGISTRAZTE Court, received by SGT J CAMBRE on at , and verified by on at .

FEB 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

SG TJ CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

Kennedy Darryl 2-10-86

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Form No. 8-002
Rev. 9/77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Kennedy Darryl A. having been arrested for the crime of
RS 14:34
RS 14:56
and having been admitted to bail in the sum of Forty Two Hundred & Fifty Dollars ($ 4250) by order of the Hon. Sh. Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson,
I, Kennedy Jerry V. of 1003 Van Trump St. Gretna
I, of
hereby undertake that the above named Kennedy Darryl A.
will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Forty Two Hundred Fifty Dollars ($ 4250) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE DAY OF , 19 AT A.M.
To be Notified

BOND NO. 99462-D
COMPLAINT NO. AG153886
DATE
DEPOSIT NO.
DATE OF BIRTH 04-28-60
ARREST DATE 2-8-86 PLACE
RELEASE DATE 2-10-86 PLACE 5FCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

DEFENDANT
1003 Van Trump St
ADDRESS
361-3441
x Jerry Kennedy
SURETY
x 1003 Van Trump St
Phone # ADDRESS 361-3441
SURETY
ADDRESS

FEB 10 1986 RECEIVED

Verbal order of Hon. Sh Wilty Judge, 24th Judicial
of the Peace Court, received by Dep. S. Sutton on
2-10-86 at 12:00 pm, and verified by
on at .

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep. S. Sutton
DEPUTY SHERIFF

FEB 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

CLERK OF COURT

Lacava, Joseph P.
2-14-86

Form No. B-002

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th. JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

JOSEPH P. LACAVA having been arrested for the crime of THEFT

and having been admitted to bail in the sum of TWENTY-FIVE HUNDRED Dollars ($ 2500.00) by order of the Hon. Jd. PORTEOUS, Judge of the 24th. JUDICIAL Court for the Parish of Jefferson, I, JOSEPH P. LACAVA III of 2712 PHIL LN. MARRERO, LA I, _____ of _____ hereby undertake that the above named JOSEPH P. LACAVA will appear at all stages of the proceedings in the 24th. JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY-FIVE HUNDRED Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON THE ____ DAY OF _____, 19__ AT ____ A.M. TO BE NOTIFIED

BOND NO. 99572-D

COMPLAINT NO. B0994786

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH _____

ARREST DATE 02-14-86 PLACE W/B

RELEASE DATE 02-14-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Joseph La Cava
DEFENDANT

2712 PHIL LN.
MARRERO 341-3644
ADDRESS

SURETY

ADDRESS

x Joseph La Cava
SURETY

x 2712 Phil Lane
ADDRESS
Marrero, La.

PHONE 341-3644

FILED FOR RECORD
FEB 19 10 28 AM
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. Jd. PORTEOUS Judge, 24th. JUDICIAL Court, received by DEP. R DUCOMBS on 02-14-86 at JPCC, and verified by SAME on SAME at _____.

Dep R Ducombs
DEPUTY SHERIFF

RECEIVED
FEB 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Mardock Stella AKA Murdock 2-12-86 Bench Warrant

B-002

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsut COURT

PERSONAL SURETY BAIL UNDERTAKING

STELLA M MARDOCK AKA MURDOCK having been arrested for the crime of AGGRAVATED CRIMINAL DAMAGE $200.00 14:55

and having been admitted to bail in the sum of TWENTY FIVE HUNDRED Dollars ($ 2500.00) by order of the Hon G. THOMAS PORTEOUS, Judge of the 24th dsit Court for the Parish of Jefferson,

I, MARY R HARRIS of 3745 REDCEDARD LA 70058

I, of

hereby undertake that the above named STELLA M MARDOCK AKA MURDOCK will appear at all stages of the proceedings in the 24th dsit Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWENTY FIVE HUNDRED Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE DAY OF , 19 AT A.M.
TO BENOTIFIED

BOND NO. 99535-D

COMPLAINT NO. B7676-86

DATE

DEPOSIT NO.

DATE OF BIRTH N/P 071865

ARREST DATE 2-10-86 PLACE BRIDGECITY

RELEASE DATE 2-12-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Stella Murdock
DEFENDANT

3745 Red Cedar Lane Harvey
ADDRESS

XXX Mary Harris
SURETY

XXX 3745 Red Cedar Lane
ADDRESS

PHONE 340-0501
SURETY

ADDRESS

FILED FOR RECORD FEB 12 10 28 AM '86 CLERK OF COURT JEFFERSON, LA.

Verbal order of Hon. G. THOMAS PORTEOUSSA Judge, 24th dsit MAGISTRATE Court, received by SGT J CAMBRE on 2-12-86 at MAGISTRATE, and verified by on at .

SG TJ CAMBRE
DEPUTY SHERIFF

RECEIVED FEB 1986 JEFFERSON PARISH SHERIFF'S OFFICE

CLERK OF COURT

Master Ques 2-10-86

Form No. B-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

PERSONAL SURETY BAIL UNDERTAKING

DARYL K MARTIN having been arrested for the crime of ~~ILLEGAL~~ DISCHARGE FIREARM

and having been admitted to bail in the sum of FOUR THOUSAND Dollars ($ 4000.00) by order of the Hon. ~~G.THOMAS PORTEO US~~, Judge of the 23th dsit MAGISTRATE Court for the Parish of Jefferson,

I, GEORGENE A BILLS of 280 LONGVIEW DR HARVEY,LA. 70048

I, _____ of _____

hereby undertake that the above named DARYL K MARTIN will appear at all stages of the proceedings in the ~~24th dsit~~ Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FOUR THOUSAND Dollars ($ 4000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dst COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

TO BE NOTIFIED

BOND NO. 99470-D

COMPLAINT NO. ~~B5583-86~~

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH N/M 020363

ARREST DATE 2-8-86 PLACE MET.LA.

RELEASE DATE 2-10-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Daryl K. Martin
DEFENDANT

6058 North 25th St. Gnf 887-0269
ADDRESS

~~X~~ George A Bills
SURETY

XX 280 Longview Dr. Harvey, La. 70049
ADDRESS

PHONE 364-1049
SURETY

ADDRESS

FEB 27 AM '86 RECORD

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24th dsit MAGISTRATE Court, received by SGT J CAMBRE on 2-10-86 at JPCCC, and verified by SGT J CAMBRE on 2-10-86 at 2.10 PM.

SG T J CAMBRE
DEPUTY SHERIFF

FEB 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

CLERK OF COURT

Malone, Kevin R
2-12-86

Form No. 8-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

MALONE Kevin R. having been arrested for the crime of
RS 14-34.1

and having been admitted to bail in the sum of Five Thousand
Dollars ($ 5000) by order of the Hon. Sol porteous, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Harvey Evelyn of 2112 Lafayette Apt. A
hereby undertake that the above named MALone, Kevin R.
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Five Thousand
Dollars ($ 5000) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE _____ DAY OF _____, 19__ AT _____ A.M.
TO Be notified

BOND NO. 99530-D

COMPLAINT NO. B08606-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 11-10-57 W/M

ARREST DATE 2-12-86 PLACE _____

RELEASE DATE 2-12-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Kevin R. Malone
DEFENDANT

2560 Wadsworth Blvd
ADDRESS

Evelyn M Harvey
SURETY

436-3330
910 Ruth Dr
Phone ADDRESS

Avondale La
SURETY

ADDRESS

FILED FOR RECORD
FEB 10 10 28 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. Sol. Witty Judge
24th Judicial Court, received by Dep. Thompson on
_____ at _____, and verified by
_____ on _____ at _____.

Dep. D. Thompson
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE
FEB 1988

Form No. B-002
Rev. 5-77

Morris, Donald
2-15-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 0 2 2 4 0 6 0 0 9 9 6

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Donald L. Morris having been arrested for the crime of
RS 14-34 Aggravated Battery

and having been admitted to bail in the sum of Three Thousand Five Hundred Dollars ($3,500.00) by order of the Hon. C. Thomas Porteous, Judge of the Twenty Fourth Judicial Court for the Parish of Jefferson, I, Louis Morris Jr. of 2909 Montford St. Jeff. La

I, _____ of _____

hereby undertake that the above named Donald L. Morris will appear at all stages of the proceedings in the Twenty Fourth Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Three Thousand Five Hundred Dollars ($ 3,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE Twenty Fourth Judicial COURT ON THE To Be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 63529-A

COMPLAINT NO. B-11248-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 03-05-51

ARREST DATE 2-15-86 PLACE 3018 Scott

RELEASE DATE 2-15-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Donald L. Morris
DEFENDANT

X 3018 Scott St
Gretna La 70121
ADDRESS

X Louis Morris Jr.
SURETY

X 2909 Montford St
Jefferson 70121
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
FEB 10 10 23 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. C. Thomas Porteous Judge, Twenty-Fourth Judicial Court, received by Dep. A. Bourne on 2-15-86 at 6:10pm, and verified by Sume on Sume at Sume

Dep. D. Bourne
DEPUTY SHERIFF

RECEIVED
FEB 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Form No. 8-002
Rev. 5-77

Porter, George M.
2-12-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 0 2 2 4 8 6 0 1 0 1 4 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Porter, George M. having been arrested for the crime of
R.S. 14-67, B Theft (F)

and having been admitted to bail in the sum of Fifteen Hundred
Dollars ($ 1500.00) by order of the Hon. Judge Porteous, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Portee, Sandra T. of 3115 Toledano St. - New Orleans, LA.
I, _____ of _____
hereby undertake that the above named Porter, George M.
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Fifteen Hundred
Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE When DAY OF Notified, 19____ AT_____ A.M.

BOND NO. ~~63563-A~~ 63503-A

COMPLAINT NO. B-9035-86

DATE_____

DEPOSIT NO._____

DATE OF BIRTH 10-19-64

ARREST DATE 2-12-86 PLACE 4000 Vets Blvd.

RELEASE DATE 2-12-86 PLACE J.P.S.O.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X George Porter
DEFENDANT

X 3115 Toledano NOLA.
ADDRESS

X Sandra A Porter
SURETY

X 3115 Toledano St
ADDRESS
New Orleans, Louisiana

SURETY

ADDRESS

FILED FOR RECORD
FEB 19 10 28 AM
CLERK OF COURT
PARISH OF JEFFERSON

Verbal order of Hon. Judge Porteous Judge, 24th
Judicial Court, received by Deputy Alice Bouvee on
02-12-86 at 8:15 P.M., and verified by
Same on Same at Same

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Deputy Alice Bouvee
DEPUTY SHERIFF

CLERK OF COURT

Phelps, Keith
2-13-86

Form No. B-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Keith Phelps. having been arrested for the crime of
14:34 - 56

and having been admitted to bail in the sum of Seven thousand
Dollars ($ 7000.00) by order of the Hon. Pertuis, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Pete Phelps Jr. of 2128 Eggonia St. N.O. La.
I, of
hereby undertake that the above named Keith Phelps.
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Seven thousand
Dollars ($ 7000) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24 Judicial COURT ON
THE DAY OF , 19 AT A.M.
To be Telephoned

BOND NO. 995490

COMPLAINT NO. B860086

DATE 2/13/86

DEPOSIT NO.

DATE OF BIRTH 10-7-63

ARREST DATE 2-12-86 PLACE Westbank

RELEASE DATE 2-13-86 PLACE Jail

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Keith Ryan Phelps
DEFENDANT 948-3654

N128 Eggonia N.O. La
ADDRESS

Pete Phelps Jr
SURETY

#2128 Eggonia St
ADDRESS N.O. La

SURETY

ADDRESS

FILED FOR RECORD
FEB 19 10 28 AM '86
CLERK OF COURT
PARISH OF JEFFERSON

Verbal order of Hon. Pertuis Judge 24th Judicial Court, received by Judicial on 2/13/86 at 1:40 pm, and verified by John at

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

Form No. B-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

Terrebonne Capital 2-21-86

PERSONAL SURETY BAIL UNDERTAKING

TERREBONNE, ROBROY R having been arrested for the crime of RS 40-969A17P, 40-969A17D, 40-968D02P

and having been admitted to bail in the sum of TEN THOUSAND Dollars ($ 10,000.00) by order of the Hon. JD. POCTEUS, Judge of the 24TH JUDICIAL Court for the Parish of Jefferson,

I, DAVID J. BOURGEOIS JR of 410 AVENUE C WESTWEGO, LA 70094

I, _____ of _____

hereby undertake that the above named ROBROY R. TERREBONNE will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TEN THOUSAND Dollars ($ 10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.
TO BE NOTIFIED

BOND NO. 99791-D
COMPLAINT NO. B-9673-86/B-9671-86
DATE 2/21/86
DEPOSIT NO. _____
DATE OF BIRTH 5/11/61
ARREST DATE 2/13/86 PLACE 3rd
RELEASE DATE 2/21/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS. BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Robroy J Terrebonne
DEFENDANT
x 364 La. St Westwego
ADDRESS

SURETY
ADDRESS

x David J Bourgeois Jr.
SURETY
x 410 AVE. C Westwego
ADDRESS

x 347-2188
PHONE

FILED FOR RECORD
FEB 21 1986
CLERK OF COURT
JEFFERSON PARISH

Verbal order of Hon. JD WILTZ Judge, JUSTICE OF THE PEACE Court, received by DEP. S. JONES on 2/21/86 at 8:30 am, and verified by _____ on _____ at _____

R.O.R.
NOTIFY - R.O.R.
ROOM 806

DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Johnny Jroglen having been arrested for the crime of R.S. 14:62 Simple Burglary R.S. 14:69.C Possession of Stolen Property and having been admitted to bail in the sum of Five thousand Dollars ($ 5000.00) by order of the Hon. Judge Richards Judge of the 24th Judicial District Court for the Parish of Jefferson, I, Ruth N. Fortenberry of 811 Rivers Rd. Marrero, LA I, _____ of _____ hereby undertake that the above named Johnny Jroglen will appear at all stages of the proceedings in the 24th Judicial District Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Five Thousand Dollars ($ 5000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Jud. Dist. COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M. TO BE NOTIFIED

BOND NO. 99-795-D
COMPLAINT NO. S1488786 S1488780
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 1-27-67
ARREST DATE 2-21-86 PLACE W/B
RELEASE DATE 2-21-86 PLACE JPCO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Johnny D. Jroglen Jr
DEFENDANT
811 River Rd. Marrero LA 70072
ADDRESS

SURETY

ADDRESS

Ruth Fortenberry
SURETY
811 River Rd Marrero La.
ADDRESS
Phone 347-7644

FILED FOR RECORD
FEB 22 PM 03
CLERK OF COURT
JEFFERSON PARISH, LA.

Verbal order of Hon. A. V. Wiltz Judge, 1st J. Dist. Court, received by Dep. Thompson on 2-21-86 at _____, and ver[illegible] on _____ at _____

FEB 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep. P. Sheff
DEPUTY SHERIFF

CLERK OF COURT

Stewart, Marvin
2-12-86

0 2 2 4 0 6 0 1 0 3 3

E OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

PERSONAL SURETY BAIL UNDERTAKING

MARVIN STEWART having been arrested for the crime of
REC. STOLEN THINGS

and having been admitted to bail in the sum of **FIVE-THOUSAND**
Dollars ($ 5,000.00) by order of the Hon. JD. PORTEOUS, Judge of
the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,
I, ARTERMEASE W. EDWARDS of 412 BUTLER ST. KENNER, LOUISIANA
I, of
hereby undertake that the above named MARVIN STEWART
will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **FIVE-THOUSAND**
Dollars ($ 5,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON
THE DAY OF , 19 AT A.M.
TO BE NOTIFIED**

BOND NO. 99530-D
COMPLAINT NO. R0856086
DATE
DEPOSIT NO.
DATE OF BIRTH 03-28-68 B/M
ARREST DATE 2-11-86 PLACE HARAHAN
RELEASE DATE 2-12-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

FILED FEB 19 1986 CLERK OF COURT PARISH OF JEFFERSON

X Marvin Stewart
DEFENDANT
X 412 Butler St.
ADDRESS
X 464-5646
SURETY
ADDRESS
X Artermease Edwards
SURETY
X 412 Butler St Kenner La
ADDRESS
Phone # 4645646

Verbal order of Hon. JD. WILTY Judge, R.O.R. JUSTICE OF THE PEACE
Court, received by DEP. D. THOMPSON on
at , and verified by
on at

R.O.R.
NOTIFY - R.O.R.
ROOM 806

Dep R Swepp
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED FEB 1986 JEFFERSON PARISH SHERIFF'S OFFICE

Summerall, Gilbert 2-16-86

Rev. 5-77

0 2 2 4 8 6 0 1 0 2 9

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

I, GILBERT J. SUMMERALL (NAME)

Of 1312 A CONGRESS ST N.O.LAL (STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: THEFT AUTO

and having been admitted to bail in the sum of TWO THOUSNAD Dollars ($ 2000.00) by order of the Hon. G.THOMAS POTERSOUS Judge of the 24th dsit Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th dsit Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 96639-0

COMPLAINT NO. B3907-81

DATE

DEPOSIT NO.

DATE OF BIRTH N/M 073162

ARREST DATE 2-16-86 PLACE GRETNA

RELEASE DATE 2-16-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

FILED FOR RECORD FEB 19 10 29 AM '86 CLERK OF COURT PARISH OF JEFFERSON, LA.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of TWO THOUSAND Dollars ($ 2000.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X X X X X Dollars ($ X XX X X X X); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24thdsit COURT ON THE _____ DAY OF _____, 19 ___ AT _____ A.M.

TO BE NOTIFIED 948-7594

x Gilbert Summerall DEFENDANT x 1213 Congress ADDRESS

Verbal order of Hon. C. THOMAS PORTEOUS, Judge, 24th sit Court, received by SGT.CAMBRE on _____ at _____, and verified by _____ on _____ at _____

SGT J CAMBRE
DEPUTY SHERIFF

FEB 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Schmitt, Rhett
2-16-86

Form No. B-002
Rev. 1/87

0224860103 1

STATE OF LOUISIANA
PARISH OF JEFFERSON

24thdsit COURT

PERSONAL SURETY BAIL UNDERTAKING

RHETT J SCHMITT having been arrested for the crime of ILL POSS STLN THINGS VAL.$8,300.00

and having been admitted to bail in the sum of THRITY FIVE HUNDRED Dollars ($3500.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of the 24th dsit Court for the Parish of Jefferson, I, SANDRA C SCHMITT of 4124 ILLINOIS ST. KENNER

I, of

hereby undertake that the above named RHETT J SCHMITT will appear at all stages of the proceedings in the 24th dist Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of THIRTY FIVE HUNDRED Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24rh dsit COURT ON THE DAY OF , 19 AT A.M.
TO B ENOTIFIED

BOND NO. 99640-D

COMPLAINT NO. B3351-86

DATE

DEPOSIT NO.

DATE OF BIRTH W/M 103164

ARREST DATE 2-14-86 PLACE KENNER

RELEASE DATE 2-16-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

468-3774
+ Rhett J Schmitt
DEFENDANT
4124 Illinois Ave. Kenner LA
ADDRESS
XX Sandra C Schmitt
SURETY
XX 4124 Illinois Ave. Kenner LA
ADDRESS
PHONE 468-3774
SURETY

FILED FOR RECORD
FEB 19 10 29 AM '86
CLERK OF COURT
JEFFERSON, LA.

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24th dsit Court, received by SGTJ CAMBRE on 2-16-86 at JPCCC, and verified by SG TJ CAMBRE on 2-16-86 at 9.00 PM.

SG T J CAMBRE
DEPUTY SHERIFF

RECEIVED
FEB 1986
SHERIFF'S OFFICE

CLERK OF COURT

Sauve William 2-10-86

Form No. B-002
Rev. 5-77

0219060 3016

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

PERSONAL SURETY BAIL UNDERTAKING

WILLIAM R SAUVE having been arrested for the crime of
THEFT VAL.$55,791.09

and having been admitted to bail in the sum of FIFTEEN THOUSAND
Dollars ($15,000.00) by order of the Hon. G.THOMAS PORTEOUS, Judge of
the 24th dsit Court for the Parish of Jefferson,
I, ~~BARBARA T SCHIBERT~~ of ~~2904 LAKE VILLA METAIRIE,LA. 70002-0000~~
I, of
hereby undertake that the above named WILLIAM R SAUVE
will appear at all stages of the proceedings in the 24th dsit
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIFTEEN THOUSAND Dollars ($ 15,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsot COURT ON
THE DAY OF , 19 AT A.M.
TO BE NOTIFIED

BOND NO. 99471-D
COMPLAINT NO. B4111-86
DATE
DEPOSIT NO.
DATE OF BIRTH W/M 030625
ARREST DATE 2-7-86 PLACE MET.LA.
RELEASE DATE 2-10-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X William R Sauvé
DEFENDANT
3400 N. Causeway Blvd
X Metairie 70002, La.
ADDRESS
XX Barbara T. Schibert
SURETY
XX 2904 Lake Villa Dr. Met
ADDRESS
PHONE 885-5673
SURETY
ADDRESS

Verbal order of Hon. VERNON WILTY 3rd ROR Judge, JSUTICE OF GHE PEACE
Court, received by SGTJCAMBE on
at , and verified by
on at .

R.O.R.
NOTIFY - R. O. R.
ROOM 806

SG TJ CAMBRE
DEPUTY SHERIFF

FEB 1986
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JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Form No. 8-002
5-77

Robinson, Orth
2-10-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

0 2 2 4 8 6 0 1 0 2 4

PERSONAL SURETY BAIL UNDERTAKING

Anthony Robinson having been arrested for the crime of RS 14:69.1 - Possession of Stolen Property Value $5,000.00

and having been admitted to bail in the sum of Three Thousand Five Hundred Dollars ($3,500.00) by order of the Hon. C. Thomas Porteous, Judge of the 24th Judicial Court for the Parish of Jefferson,

I, Pearlette Robinson of 2005 Lasalle St. New Orleans, La

I, _____ of _____

hereby undertake that the above named Anthony Robinson will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of Three Thousand Five Hundred Dollars ($3,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE To Be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 6341/3-A

COMPLAINT NO. A-16003-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 11-18-53

ARREST DATE 2-10-86 PLACE 5631 Jenson

RELEASE DATE 2-10-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Anthony Robinson
DEFENDANT

x 1240 8660
ADDRESS

x Pearlette Robinson
SURETY

x 2005 La Salle St
ADDRESS

SURETY

ADDRESS

FILED FOR RECORD
FEB 10 10 28 AM '86
CLERK OF COURT
PARISH OF JEFFERSON, LA.

Verbal order of Hon. C. Thomas Porteous Judge, 24th Judicial Court, received by Sgt. D. Bates on 2-10-86 at 9:40pm, and verified by Same on Same at Same

Sgt. D. Bates
DEPUTY SHERIFF

CLERK OF COURT

FEB 1986
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SHERIFF'S OFFICE

I 2 3 0 0 6 0 3 0 6 4

Rev. 5-77

Blair, Ronald
12-22-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

TWENTY FOURTH COURT

I, BLAIR, RONALD
(NAME)

Of 3227 BLAIR ST NEW ORLEANS LA
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: RS 14-67,37,35,56,,56,35,65,56,62,

and having been admitted to bail in the sum of FIVE THOUSAND Dollars

($ 5000.00) by order of the Hon. JUDGE PORTEOUS Judge of the

24TH JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109063-D

COMPLAINT NO. I-19064-86 L-9655-86 K-9656-86 I-12439-86

DATE

DEPOSIT NO.

DATE OF BIRTH 9/23/63

ARREST DATE 12/22/86 PLACE WESTBANK

RELEASE DATE 12/22/86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIVE THOUSAND Dollars ($ 5000.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of ////////////

Bell, Briant R.
12-23-86

B-002
Rev. 9/86

53062

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

PERSONAL SURETY BAIL UNDERTAKING

BRIANT R BELL having been arrested for the crime of
~~FUG HOUSTON TEXAS 455777~~

and having been admitted to bail in the sum of ~~FIVE THOUSAND~~
Dollars ($ 5000.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of
the 24th dsit Court for the Parish of Jefferson,
I, ELISE D HUNT of 4305 WOODLAND DR ALGIERS,LA.
I, of
hereby undertake that the above named BRIANT R BELL
will appear at all stages of the proceedings in the 24th dsit
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIVE THOUSAND Dollars ($ 5000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24thdsit COURT ON
THE DAY OF , 19 AT A.M.
TO BE NOTIFIED

BOND NO. 10910
COMPLAINT NO. I-51318-86
DATE
DEPOSIT NO.
DATE OF BIRTH W/M 050239
ARREST DATE 12-23-86 PLACE GRETNA
RELEASE DATE 12-23-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Briant R. Bell
DEFENDANT
4303 Woodland Dr
N.O. LA. 70114
ADDRESS
393-8017

X Elise D. Hunt
SURETY
X 4305 Woodland Dr.
ADDRESS
New Orleans, La. 70114
PHONE 394-1823
SURETY
ADDRESS

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24th dsit
AS STATED ON BOND Court, received by SGT J CAMBRE on
~~12-23-86~~ at JPCCC, and verified by
SGT J CAMBRE on 12-23-86 at 7:00 PM.

SGTJ CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
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JEFFERSON PARISH
SHERIFF'S OFFICE

Bourge, Merke P.
12-23-86

Form No. B-002
Rev. 5-77

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STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT **COURT**

PERSONAL SURETY BAIL UNDERTAKING

MERKE P. BOURGE (BOURGERE) having been arrested for the crime of SIMPLE BURGLARY

and having been admitted to bail in the sum of **SEVENTY-FIVE-HUNDRED** Dollars ($ 7,500.00) by order of the Hon. JD. T. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, N NAOMI N BOURGERE of N 1525 SILVER LILLY LN. MARRERO LA

I, of

hereby undertake that the above named MERKE P. BOURGE will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **SEVENTY-FIVE-HUNDRED* Dollars ($ 7,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE DAY OF , 19 AT A.M.

** TO BE NOTIFIED**

BOND NO. 109090-0

COMPLAINT NO. L14638186

DATE

DEPOSIT NO.

DATE OF BIRTH 11-18-58 B/M

ARREST DATE 12-22-86 PLACE W. BANK

RELEASE DATE 12-23-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Ph - 340-6760

x Merke Paul Bourge
DEFENDANT

x 1525 Silver Lilly Ln, Marrero
ADDRESS

SURETY

ADDRESS

x Naomi Bourgere
SURETY

x 1525 Silver Lilly Marrero, La
ADDRESS

phone # 340-8255

Verbal order of Hon. JD. V. WILTY III Judge, R.O.R. JUSTICE OF THE PEACE Court, received by DEP. R. DUCOMBS on at , and verified by on at

DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. 8-002
Rev. 5-77

Collette Jerome
12-22-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

123008 24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Jerome Collette having been arrested for the crime of
RS 14-69 Possession of Stolen Property

and having been admitted to bail in the sum of One Thousand Five Hundred Dollars ($ 1,500.00) by order of the Hon. G. Thomas Porteous, Judge of the Twenty Fourth Judicial Court for the Parish of Jefferson,
Martin A Collette of 7218 Ransom Ave Orleans La.

I, _____ of _____
hereby undertake that the above named Jerome Collette
will appear at all stages of the proceedings in the Twenty Fourth Judicial Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of One Thousand Five Hundred Dollars ($ 1,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE Twenty-Fourth Judicial COURT ON THE TO Be DAY OF Notified, 19____ AT _____ A.M.

BOND NO. 67144-A
COMPLAINT NO. L-15093-86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 06-17-66
ARREST DATE 12-22-86 PLACE 3301 Vets
RELEASE DATE _____ PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

7218 Ransom St.
DEFENDANT
Jerome Collette
ADDRESS
Martin A Collette Jr
SURETY
7218 Ransom Ave.
ADDRESS
SURETY
ADDRESS

FILED FOR RECORD
DEC 29 10 28 AM '86

Verbal order of Hon. G. Thomas Porteous Judge, Twenty-Fourth Judicial Court, received by Sgt. Bates on 12-22-86 at 10:00pm, and verified by Same on Same at Same

DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Chisley, Dana L 12-22-86

Rev. 5-77

I 2 3 0 0 6 0 3 0 7 0

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

I, DANA L CHISLEY
(NAME)

Of 3531 BURNS ST JEFFERSON, LA.
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: THEFT VAL. $100.00

and having been admitted to bail in the sum of FIFTEEN HUNDRED Dollars ($ 1500.00) by order of the Hon. G. THOMAS PORTEOUS Judge of the 24thdsit Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th dsit Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109085-D

COMPLAINT NO. L10958-86

DATE

DEPOSIT NO.

DATE OF BIRTH N/M 101060

ARREST DATE 12-22286 PLACE MET, LA.

RELEASE DATE 12-22-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIFTEEN HUNDRED Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X X Dollars ($X X X X X); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE _____ DAY OF _____ TO B ENOTIFIED 19 AT _____ A.M.

X Dana Chisley
DEFENDANT

X 3531 BURNS
ADDRESS
JEFFERSON, LA.

Verbal order of Hon. G. THOMAS PORTEOUS, Judge, 24th dsit Court, received by SGT J CAMBRE on _____ at _____, and verified by _____ on _____ at _____

SGT J CAMBRE
DEPUTY SHERIFF

DEC 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

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Form [illegible]-002
Rev. 5-79

Doucet, Paul Sr
12-30-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

DOUCET, PAUL SR W/M having been arrested for the crime of
RS 14-67.A, RS 14-69

and having been admitted to bail in the sum of TEN THOUSAND
Dollars ($ 10,000.00) by order of the Hon. PORTEOUS, Judge of
the 24TH JUDICIAL Court for the Parish of Jefferson,
I, GAUTREAUX, DEBORAH M of ~~5924 KAREN DR~~, MARRERO LA
I, of 385 Louisiana Ave Westwego La
hereby undertake that the above named DOUCET, PAUL SR
will appear at all stages of the proceedings in the 24TH JUDICIAL
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TEN THOUSAND Dollars ($ 10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON
THE _____ DAY OF _____, 19____ AT _____ A.M.
TO BE NOTIFIED

BOND NO. 1090280
COMPLAINT NO. L1289286
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH ~~XXXXXX~~ 070550
ARREST DATE 122086 PLACE 3RD DIST
RELEASE DATE 122086 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Paul Doucet
DEFENDANT
331 La. Ave Westwego
ADDRESS

SURETY
ADDRESS

x Deborah M. Gautreaux
SURETY
xx 385 Louisiana Ave.
ADDRESS
Westwego, La. 70094
PHONE # 436-8349

Verbal order of Hon. PORTEOUS Judge, 24TH JUDICIAL Court, received by SGT D S WOLFSON on 122086 at ~~JPCC INTAKE BOOKING~~, and verified by _____ on _____ at _____

SGT D S WOLFSON
DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Davis, Robert J.
12-22-86

Form No. B-002
Rev. 9-77

1 2 3 0 0 6 0 3 0 7 3

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

PERSONAL SURETY BAIL UNDERTAKING

ROBERT L DAVIS having been arrested for the crime of POSS MARIJUANA

and having been admitted to bail in the sum of FIVE HUNDRED Dollars ($500.00) by order of the Hon. G THOMAS PORTEOUS, Judge of the 24thdsit Court for the Parish of Jefferson,

I, LEONEASE S KAISER of 57 NORTON ST WESTWEGO,LA.

I, of

hereby undertake that the above named ROBERT L DAVIS will appear at all stages of the proceedings in the 24thdsit Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIVE HUNDRED Dollars ($500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24thdsit COURT ON THE DAY OF , 19 AT A.M.
TO BE NOTIFIED

BOND NO. 109073-D

COMPLAINT NO. L14465-86

DATE

DEPOSIT NO.

DATE OF BIRTH N/M 072153

ARREST DATE 12-21-86 PLACE MARRERO

RELEASE DATE 12-22-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Robert L. Davis
DEFENDANT

57 NORTON ST. WESTWEGO 340-8386
ADDRESS

Leonease S. Kaiser
SURETY

57 Norton St. Westwego La
ADDRESS

PHONE 340-8386
SURETY

ADDRESS

DEC 22 10 27 AM '86

Verbal order of Hon. G.THOMAS PORTEOUS Judge, 24thdsit Court, received by SGT J CAMBRE on 12-22-86 at JPCCC, and verified by SGT J CAMBRE on 12-22-86 at 400 PM.

J Cambre
SGT J CAMBRE
DEPUTY SHERIFF

DEC 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

CLERK OF COURT

Harper, David C.
12-23-86

Form No. 8-002
Rev. 5-77

| 2 3 0 0 6 3 0 8 |

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

PERSONAL SURETY BAIL UNDERTAKING

DAVID C HARPER having been arrested for the crime of ATTEMPTED SIMPLE BURGLARY, AUTO THEFT, POSSESSION OF STOLEN AUTO

and having been admitted to bail in the sum of **TEN-THOUSAND** Dollars ($ 10,000.00) by order of the Hon. JD. T. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson, I, ADALVE HARPER of 921 N. CLAIBORNE PKWY WESTWEGO, LOUISIANA I, WILLIE M HARPER of 545 AVENUE E WESTWEGO, LOUISIANA hereby undertake that the above named DAVID C HARPER will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **TEN-THOUSAND** Dollars ($ 10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

BOND NO. 1090920 **TO BE NOTIFIED**

COMPLAINT NO. L14524-86 L14515-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 11-10-68 B/M

ARREST DATE 12-22-86 PLACE EAST BANK

RELEASE DATE 12-23-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

David Harper
DEFENDANT
921 N Claiborne, Westwego
ADDRESS

1) Adalve Harper 436-3873
SURETY
921 N Claiborne Pkwy
Westwego, LA 70094
ADDRESS PH 436-5429

2) Willie Mae Harper
SURETY
984 N Claiborne Pkwy Westwego
ADDRESS
phone # 436-3825

23 DEC 86

Verbal order of Hon. JD. V. WILTY III Judge, R.O.R. JUSTICE OF THE PEACE Court, received by DEP. R. DUCOMBS on _____ at _____, and verified by _____ on _____ at _____.

Deputy Sheriff

DEC 1986 RECEIVED JEFFERSON PARISH CLERK'S OFFICE

CLERK OF COURT

Ingram, Thomas 3rd
12-23-86

Rev. 5-77

I 3 3 0 0 3 0 0 6

STATE OF LOUISIANA
PARISH OF JEFFERSON ~~24thdsit~~ **COURT**

I, THOMAS O INGRAM 3rd (NAME)

Of 549 C DUBISSON RD (STREET ADDRESS) SLIDELL (CITY) LA. (STATE)

Having been arrested for the crime(s) of: AUTO THEFT VAL. $6000.00

and having been admitted to bail in the sum of ~~TWENTY FIVE HUNDRED~~ Dollars

($ 2500.00) by order of the Hon. G. THOMAS PORTEOUS Judge of the

~~24thdsit~~ Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the ~~24thdsit~~ Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109101

COMPLAINT NO. B-7386-86

DATE

DEPOSIT NO.

DATE OF BIRTH ~~W/M~~ 2-3-47

ARREST DATE 12-23-86 PLACE GRETNA

RELEASE DATE 12-23-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of TWENTY FIVE HUNDRED Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X X Dollars ($ X X X X X); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE ~~24th dsit~~ COURT ON THE _____ DAY OF _____, 19 ___ AT _____ A.M.
TO BE NOTIFIED

X Thomas O. Ingram III
DEFENDANT

XX 549 C Dubisson Rd.
ADDRESS
Slidell LA. 70460
(504) 649-7874

Verbal order of Hon. G. THOMAS PORTEOUS, Judge, ~~24th dist~~ Court, received by SGT J CAMBRE on 12-23-86 at JPCCC, and verified by SGT J CAMBRE on 12-23-86 at 2/30 PM

SGT J CAMBRE
DEPUTY SHERIFF

DEC 1986
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JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182

ORIGINAL COPY TO CLERK OF COURT

0 1 0 9 6 7 0 3 0 1 9

Form No. 8-002
Rev. 6-77

Junior Debra 12-25-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT **COURT**

PERSONAL SURETY BAIL UNDERTAKING

DEBRA JUNIOR having been arrested for the crime of
THEFT VALUE $110.00

and having been admitted to bail in the sum of **FIFTEEN-HUNDRED**
Dollars ($ 1,500.00) by order of the Hon. JD. T. PORTEOUS, Judge of
the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,
I, OZEMAE JUNIOR of 1147 Cobden ST, MARRERO
I, of
hereby undertake that the above named DEBRA JUNIOR
will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **FIFTEEN-HUNDRED**
Dollars ($ 1,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON
THE DAY OF , 19 AT A.M.

BOND NO. 109174 ** TO BE NOTIFIED**
COMPLAINT NO. I02066 85
DATE
DEPOSIT NO.
DATE OF BIRTH 07-09-64 B/F
ARREST DATE 12-25-86 PLACE W. BANK
RELEASE DATE PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Debra Junior
DEFENDANT
x6511 JULIA MARRERO LA
ADDRESS 348-4590
x02 ENDEOUMS
SURETY
x1147 Comedy
ADDRESS
PHONE 341-3749
SURETY
ADDRESS

Verbal order of Hon. JD. V. WILTY III Judge, R.O.R. JUSTICE OF THE PEACE
Court, received by DEP. R. DUCOMBS on
at , and verified by
on at

DEC 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

DEPUTY SHERIFF

CLERK OF COURT

James James 12-23-86

Rev. 5-77

1 2 3 0 0 6 0 3 0 0 5

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit COURT

I, JAMES JONES
(NAME)

Of 825 23rd ST GRETNA,LA.
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: THEFT SHOPLIFTING VAL.$100.76
and having been admitted to bail in the sum of FIFTEEN HUNDRED Dollars
($1500.00) by order of the Hon. G. THOMAS PORTEOUS Judge of the
24th sit Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24thdsit Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109000 d
COMPLAINT NO. L15121-86
DATE
DEPOSIT NO.
DATE OF BIRTH N/M 111851
ARREST DATE 12-22-86 PLACE GRETNA
RELEASE DATE 12-23-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of FIFTEEN HUNDRED Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X Dollars ($ X X X X); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24-h.dist COURT ON THE
DAY OF , 19 AT A.M.
TO BE NOTIFIED

x James Jones DEFENDANT x 825 23rd St Gretna, La ADDRESS

Verbal order of Hon. G. THOMS PORTEOUS 366-7020 Judge,
24th-sit MAGISTRATE Court, received by SGT J CAMBE on
12-23-86 at JPCCC , and verified by
SGT J CAMBRE on 12-23-86 at 2.203 PM

SGTJ CAMNRBVRE
DEPUTY SHERIFF

DEC 1986
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JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 5-77

Kelley Pennington
12-11-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Perry A Keller having been arrested for the crime of
WDW 14-62

and having been admitted to bail in the sum of Ten Thousand
Dollars ($10,000.00) by order of the Hon. Pertuis, Judge of
the 24TH Judicial Court for the Parish of Jefferson,
I, Audrey Keller of 4341 Lucerne St. Met, La 70002
I, Frederick Keller of 4341 Lucerne St. Met, La 70002
hereby undertake that the above named Perry Keller,
will appear at all stages of the proceedings in the 24TH Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Ten Thousand
Dollars ($10,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH Judicial COURT ON
THE _____ DAY OF _____, 19____ AT _____ A.M.
TO Be Notified

BOND NO. 108653-D
COMPLAINT NO. I134288 6
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 6-29-58
ARREST DATE 12-11-86 PLACE _____
RELEASE DATE 12-11-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

+ Perry A Keller
DEFENDANT
+ 4617 Rush Met 70002
ADDRESS
X Audrey Keller
SURETY
X 4341 Lucerne Met 454-3363
ADDRESS
X Frederick Keller
SURETY
X 4341 Lucerne St. Met. 454-3363
ADDRESS

Verbal order of Hon. Pertuis Judge,
24TH Judicial Court, received by Dep: D Thompson on
_____ at _____, and verified by
_____ on _____ at _____

Dep D Thompson
DEPUTY SHERIFF

CLERK OF COURT

RECEIVED
DEC 1986
JEFFERSON PARISH
SHERIFF'S OFFICE

Norwood, Timothy
12-23-86

Form No. B-002
Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th dsit
_____ **COURT**

PERSONAL SURETY BAIL UNDERTAKING

TIMOTHY J NORWOOD having been arrested for the crime of
THEFT VAL. $2000.00

and having been admitted to bail in the sum of FOUR THOUSAND
Dollars ($$000.00) by order of the Hon. G. THOMAS PORTEOUS, Judge of
the 24thdsit Court for the Parish of Jefferson,
I, PATRICIA A NORWOOD of P.O. BOX 102 FRANKLINTON ,LA.
I, _____ of _____
hereby undertake that the above named TIMOTHY J NORWOOD
will appear at all stages of the proceedings in the 24th dsit
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FOUR THOUSAND Dollars ($ 4000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON
THE _____ DAY OF _____, 19____ AT _____ A.M.

TO BE NOTIFIED

BOND NO. 109107-D

COMPLAINT NO. L51005-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH W/M 080655

ARREST DATE 12-23-86 PLACE GRETNA

RELEASE DATE 12-23-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Timothy Norwood
DEFENDANT

x PO 102 FRANKLINTON LA. 70438
ADDRESS 839-6575

Patricia Norwood
SURETY

x P.O. Box 102 Franklinton La.
ADDRESS

504 839-6575
SURETY

ADDRESS

Verbal order of Hon. G. THOMAS PORTEOUS Judge, 24th dsit
Court, received by SGT J CAMBRE on
12-23-86 at JPCCC, and verified by
SGT J CAMBRE on 12-23-86 at 6.20 PM.

SGT J CAMBRE
DEPUTY SHERIFF

CLERK OF COURT

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JEFFERSON PARISH
SHERIFF'S OFFICE

Pearson, Eddie E.
12-22-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

Twenty-Fourth Jud COURT

I, Eddie E. Pearson (NAME)
of 7721 Norton Ave. Harahan La. (STREET ADDRESS) (CITY) (STATE)
Having been arrested for the crime(s) of: RS 14:67 Theft by Fraud
and having been admitted to bail in the sum of Two Hundred Dollars
($2,000.00) by order of the Hon. G. Thomas Porteous Judge of the
Twenty-Fourth Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the Twenty-Fourth Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 67142-A
COMPLAINT NO. L-14708-86
DATE
DEPOSIT NO.
DATE OF BIRTH 06-03-48
ARREST DATE 12-22-86 PLACE 4400 Vets
RELEASE DATE 12-22-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Two Thousand Dollars ($2,000.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X Dollars ($XXXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE Twenty-Fourth Jud COURT ON THE 10 Be DAY OF Notified, 19 AT A.M.

x Eddie E. Pearson (DEFENDANT) x 7721 Norton Ave., Harahan LA (ADDRESS)

Verbal order of Hon. G. Thomas Porteous, Judge, Twenty-Fourth Judicial Court, received by Sgt. D. Crews on 12-22-86 at 2:50pm, and verified on Same on Same at Same

DEC 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

Sgt. D. Crews (DEPUTY SHERIFF)

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

STATE OF LOUISIANA
PARISH OF JEFFERSON

24/31 JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

887-8002

EDISON J PARFAIT having been arrested for the crime of RS 14.62

and having been admitted to bail in the sum of FIFTEEN THOUSAND Dollars ($ 15,000.00) by order of the Hon. JUDGE PONTICUS, Judge of the 24TH JUDICIAL Court for the Parish of Jefferson,

I, DORIS C. PARFAIT of 2108 DAVID DR METAIRIE LA

I, _____ of _____

hereby undertake that the above named EDISON J. PARFAIT will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIFTEEN THOUSAND Dollars ($ 15,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE 12 DAY OF AUGUST, 19 _____ AT _____ A.M.

BOND NO. 6 7174-A

COMPLAINT NO. 2-179-27-96

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 12-08-61

ARREST DATE 12 2716 PLACE JPSO

RELEASE DATE 12 2716 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Edison Parfait
DEFENDANT

X 2108 David Dr.
ADDRESS

X Doris Parfait
SURETY

X 2108 David Dr.
ADDRESS Metairie, La. 70003

887-8002
SURETY

ADDRESS

Verbal order of Hon. Judge Ponticus Judge, 24th J. District Court, received by Deputy Richard [illegible] on 12-3-16 at 11:00 a.m., and verified by SHARE on 12-6-16 at [illegible].

FILED DEC 1986

NOTE: Psb. will to be [illegible] the P. Court/ [illegible] Judge. Richard Courts [illegible] by Judge Ponticus

DEPUTY SHERIFF

DEC 1986
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JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-79

Rollins Graylin
12-25-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT **COURT**

PERSONAL SURETY BAIL UNDERTAKING

GRAYLIN ROLLINS having been arrested for the crime of
THEFT BY SHOPLIFTING VAL $190.00

and having been admitted to bail in the sum of **THIRTY-FIVE-HUNDRED**
Dollars ($ 3,500.00) by order of the Hon. T. PORTEOUS, Judge of
the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,
I, ROOSEVELT PEABODY of 911 FOURTH ST KENNER LOUISIANA
I, of
hereby undertake that the above named GRAYLIN ROLLINS
will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT
Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **THIRTY-FIVE-HUNDRED**
Dollars ($ 3,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON
THE DAY OF , 19 AT A.M.

** TO BE NOTIFIED **

BOND NO. 109151-D

COMPLAINT NO. L48607 86

DATE

DEPOSIT NO.

DATE OF BIRTH 06-10-59 B/M

ARREST DATE 12-24-86 PLACE KENNER

RELEASE DATE 12-25-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

469-6589

Graylin Rollins
DEFENDANT

3139 Bain Bridge
ADDRESS

SURETY

ADDRESS

X Roosevelt Peabody
SURETY

X 911 4th St Kenner
ADDRESS

phone # 469-2563

Verbal order of Hon. JD. T. PORTEOUS Judge, 24TH JUDICIAL DISTRICT
Court, received by DEP. R. DUCOMBS on
at , and verified by
on at

Dep R
DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

Form No. B-002
Rev. 5-77

Robinson, Connie
12-27-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT COURT

PERSONAL SURETY BAIL UNDERTAKING

CONNIE ROBINSON having been arrested for the crime of ATTACHMENT # 86 1423 J 155 BAD CHECKS

and having been admitted to bail in the sum of ** SEVENTY-FIVE-HUNDRED ** Dollars ($ 7,500 00) by order of the Hon. JD T PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, MILTON J. WELLS of 1340 NURSERY PLACE, METAIRIE, LA

I, _____ of _____

hereby undertake that the above named CONNIE ROBINSON will appear at all stages of the proceedings in the 24TH JUDICIAL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of SEVENTY-FIVE HUNDRED Dollars ($ 7,500 00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.
* TO BE NOTIFIED *

BOND NO. 109196
COMPLAINT NO. L 48868 86
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 04-19-63 W/F
ARREST DATE 12-26-86 PLACE KENNER
RELEASE DATE 12-27-86 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

835-2232
Connie Robinson
DEFENDANT
BLO Nursery PL.
ADDRESS

SURETY
ADDRESS
Milton J. Wells
SURETY
1340 Nursery Pl. Met. La.
ADDRESS
phone # 835-2232

Verbal order of Hon. JD T PORTEOUS Judge, 24TH JUDICIAL DISTRICT Court, received by DEP. R. DUCOMBS on _____ at _____, and verified by _____ on _____ at _____.

Deputy Richard
DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED
JEFFERSON PARISH
DEPUTY SHERIFF'S OFFICE

Rose, Marie D
12-27-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

I, Marie D. Rose
(NAME)
Of 418 Pelican Ave #1 New Orleans, La
(STREET ADDRESS) CITY STATE
Having been arrested for the crime(s) of: ATT. 86139.05 (65:14.82)
and having been admitted to bail in the sum of Two Thousand Five Hundred Dollars
($ 2500.00) by order of the Hon. TOR Teaus Judge of the
24th JUDICIAL Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th JUDICIAL Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109200
COMPLAINT NO. L1802486
DATE
DEPOSIT NO.
DATE OF BIRTH 081959
ARREST DATE 122786 PLACE U.B.
RELEASE DATE 122786 PLACE J.P.C.C.

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Two Thousand Five Hundred Dollars ($ 2500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of XXXXXXX Dollars ($ XXX); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL DIV "A" COURT, ON THE 7th DAY OF JAN, 19 86 AT 9:00 A.M.

x Marie Rose
DEFENDANT

x 418 Pelican Ave
ADDRESS

Verbal order of Hon. Porteous 367-7610 Judge, 24th JUDICIAL Court, received by [signature] on 12 27 86 at 6:00 pm, and verified by _____ on _____ at _____

[signature]
DEPUTY SHERIFF

DEC 1986
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JEFFERSON PARISH
SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 5-77

Reese Kenneth J.
12-7-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

121106019 41

PERSONAL SURETY BAIL UNDERTAKING

Kenneth J. Reese having been arrested for the crime of RS14.122

and having been admitted to bail in the sum of TWO THOUSAND Dollars ($2,000.00) by order of the Hon. JUDGE PORTEOUS, Judge of the 24th JUDICIAL Court for the Parish of Jefferson, JUDGE A. FERNANDEZ of 561 Phyllis DR. AVONDALE, LA.

I, _____ of _____

hereby undertake that the above named Kenneth J. Reese will appear at all stages of the proceedings in the 24th JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of TWO THOUSAND Dollars ($2,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON THE TO Be DAY OF NOTIFIED, 19____ AT _____ A.M.

BOND NO. 66985-A

COMPLAINT NO. L-4209-86

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 07-30-65

ARREST DATE 12-7-86 PLACE JPSO

RELEASE DATE 12-7-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Kenneth J. Reese
DEFENDANT

629 Phyllis DR.
ADDRESS

Jorge Fernandez
SURETY

8705 Jeff Hwy #113
ADDRESS 738-3745

River Ridge LA 70123
SURETY

ADDRESS

Verbal order of Hon. JUDGE PORTEOUS Judge 24th JUDICIAL Court, received by Deputy Richard Ventola on 12-7-86 at 9:30 AM, and verified by SAME on SAME at SAME

Deputy R. Ventola
DEPUTY SHERIFF

CLERK OF COURT

FILED DEC 1986 RECEIVED

Stodman, Robert B. 12-22-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON 24th dsit **COURT**

I ROBERT B. STODMAN
(NAME)

Of 1743 P.O. BOX LACOMBE, LA
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: ATT THEFT & CARRY WEAPON

and having been admitted to bail in the sum of SEVEN TEEN HUNDRED FIFTY Dollars ($ 1750.00) by order of the Hon. ~~G. THOMAS PORTEOUS~~ Judge of the 24th dsit Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th dsit Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109083-D

COMPLAINT NO. L14907-86

DATE

DEPOSIT NO.

DATE OF BIRTH W/F 080956

ARREST DATE 12-22-86 PLACE HARVEY

RELEASE DATE 12-22-86 PLACE JPCCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of SEVENTEEN HUNDRED FIFTY Dollars ($ 1750.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X X Dollars ($ X X X X X); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE DAY OF , 19 AT A/M.

X Robert Dean Stodman DEFENDANT X NOTIFIED P.O. BOX 1743 Lacombe, La. ADDRESS

Verbal order of Hon. G. THOMAS PORTEOUS, Judge, 24th dist Court, received by SGT J. CAMBRE on at , and verified by on at

SGT J. CAMBRE DEPUTY SHERIFF

DEC 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Summons Issued 12-25-86

Form No. B-002
Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL DISTRICT **COURT**

PERSONAL SURETY BAIL UNDERTAKING

SANDRA SUMMERS having been arrested for the crime of SIMPLE CRIMINAL DAMAGE TO PROPERTY

and having been admitted to bail in the sum of **TWENTY-FIVE-HUNDRED** Dollars ($2,500.00) by order of the Hon. JD. T. PORTEOUS, Judge of the 24TH JUDICIAL DISTRICT Court for the Parish of Jefferson,

I, _____ of _____

I, _____ of _____

hereby undertake that the above named SANDRA SUMMERS will appear at all stages of the proceedings in the 24TH JUDICAIL DISTRICT Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of **TWENTY-FIVE-HUNDRED** Dollars ($2,500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL DISTRICT COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

** TO BE NOTIFIED**

BOND NO. 109172

COMPLAINT NO. H18693 85

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 10-28-67 B/F

ARREST DATE 12-25-86 PLACE W. BANK

RELEASE DATE _____ PLACE _____

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

x Sandra Summers
DEFENDANT

x 5809 Glasco DR Marrero La
ADDRESS 437-8573

SURETY

x 5809 GLASSCO Marrero
ADDRESS PH. 437-8573

x _____
SURETY

_____
ADDRESS

DEC 12 12 PM '87

Verbal order of Hon. JD. V. WILTY III Judge, R.O.R. JUSTICE OF THE PEACE Court, received by DEP. R. DUCOMBS on _____ at _____, and verified by _____ on _____ at _____.

DEPUTY SHERIFF

DEC 1986
RECEIVED
JEFFERSON PARISH
SHERIFF'S OFFICE

CLERK OF COURT

Thomas Daryl 12-26-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON 24th Judicial COURT

I, Daryl B. Thomas (NAME)
Of 2825 Berwick St. Jefferson La (STREET ADDRESS) (CITY) (STATE)
Having been arrested for the crime(s) of: 14:67.3
and having been admitted to bail in the sum of fifteen hundred Dollars ($ 1500.00) by order of the Hon. Judge Porteous Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109169D
COMPLAINT NO. L-14305-86
DATE
DEPOSIT NO.
DATE OF BIRTH 6-30-55
ARREST DATE 12-25-86 PLACE Jeff.
RELEASE DATE 12-26-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Fifteen Hundred Dollars ($ 1500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($ _____); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____ AT _____ A.M.

833-7592 To be Notified
Daryl Thomas (DEFENDANT) 2825 Berwick (ADDRESS) at La.

Verbal order of Hon. Judge V. Willy Judge of the Court, received by Dep R. Duvernois on 12-26-86 at _____ and verified by _____ on _____ at _____

Dep E. [illegible] (DEPUTY SHERIFF)

DEC 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Rev. 5-77

Thomas Johnny 12-26-86

STATE OF LOUISIANA
PARISH OF JEFFERSON 24th Judicial COURT

I, Johnny Thomas (NAME)
Of 2825 Berwick St, Jefferson (STREET ADDRESS) CITY STATE
Having been arrested for the crime(s) of: 14:67
and having been admitted to bail in the sum of One Thousand Five Hundred Dollars ($ 1,500.00) by order of the Hon. Fortenberry Judge of the 24th Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24th Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109170D
COMPLAINT NO. C1730586
DATE
DEPOSIT NO.
DATE OF BIRTH 6/1/54
ARREST DATE 12/25/86 PLACE W/R
RELEASE DATE 12/26/86 PLACE JPCC

THE ADDRESS SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of One Thousand Five Hundred Dollars ($ 1,500.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of _____ Dollars ($ _____), and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON THE _____ DAY OF _____, 19__ AT _____ A.M.

833-7592 To Be Assigned
Johnny Thomas 2825 Berwick St
DEFENDANT ADDRESS

Verbal order of Hon. Wilty Judge,
Justice of Peace Court, received by Dep. Durand's on
12/26/86 at 11:00 AM, and verified by
Same on _____ at _____

DEC 1986
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JEFFERSON PARISH
SHERIFF'S OFFICE

Dep. W. [illegible]
DEPUTY SHERIFF

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. 8902
Rev. 5-77

Wilson Jimmy
12-28-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Jimmy Wilson, Jr. having been arrested for the crime of
R574-67

and having been admitted to bail in the sum of One thousand Dollars ($ 1000.00) by order of the Hon. Judge Porteous Judge of the 24th Judicial District Court for the Parish of Jefferson, I, Ivy Hickinson of 1216 Ames Blvd Marrero, La. I, of hereby undertake that the above named Jimmy Wilson Jr. will appear at all stages of the proceedings in the 24th Judicial District Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of One Thousand Dollars ($ 1000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial Dist COURT ON THE ____ DAY OF ____, 19__ AT ____ A.M. TO-BE-NOTIFIED

BOND NO. 109226-D

COMPLAINT NO. L-1868286

DATE

DEPOSIT NO.

DATE OF BIRTH 03-03-69

ARREST DATE 12-28-86 PLACE Westwego

RELEASE DATE 12-28-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

PH 345-2343
Jimmie Wilson Jr.
DEFENDANT
1216 Ames Blvd
ADDRESS
Marrero
SURETY
ADDRESS
x Ivy Hickinson
SURETY
c/1216 Ames Blvd, Marrero La. 70072
ADDRESS
Phone # 348-2343

Verbal order of Hon. Judge T. Porteous Judge, 24th Judicial Dist. Court, received by Dep. E. Stich on 12-28-86 at 12:05 Am, and verified by ____ on ____ at ____

DEC 1986
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Dep E
DEPUTY SHERIFF

CLERK OF COURT

Williams Edith 12-1-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH Judicial COURT

I, Edith AKA M Washington Williams (NAME)
of 2728 Leonidas St. New Orleans, La. (STREET ADDRESS) (CITY) (STATE)
Having been arrested for the crime(s) of: WARR 14-71
and having been admitted to bail in the sum of Two Thousand Dollars ($2,000.00) by order of the Hon. Porteous Judge of the 24TH Judicial Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24TH Judicial Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109211-J
COMPLAINT NO. E1934486
DATE
DEPOSIT NO.
DATE OF BIRTH 3-14-35
ARREST DATE 12-28-86 PLACE
RELEASE DATE 12-28-86 PLACE JPSO

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT. AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of Two Thousand Dollars ($2,000.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of Dollars ($); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH Judicial COURT ON THE DAY OF 19 AT A.M.

Edith Washington Co of notified DEFENDANT 2728 Leonidas St. ADDRESS N.O., La. 70118

Verbal order of Hon. Porteous, Judge, 24TH Judicial Court, received by Dep Thompson on at , and verified by on at

Dep Thompson DEPUTY SHERIFF

DEC 1986 RECEIVED JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Woodland Charles 12-87-86

Form No. B-002
Rev. 9/87

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th JUDICIAL COURT

PERSONAL SURETY BAIL UNDERTAKING

Charles J. Woodland having been arrested for the crime of
RS14-34

and having been admitted to bail in the sum of three thousand five hundred
Dollars ($ 3500.00) by order of the Hon. Porteous, Judge of
the 24th JUDICIAL Court for the Parish of Jefferson,
I, Joanne W. Hughes of 7180 Whitmore Pl. N.O., La 70123
I, _____ of _____
hereby undertake that the above named Charles J. Woodland
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of three thousand five hundred
Dollars ($ 3500.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th JUDICIAL COURT ON
THE XXXXX DAY OF XXXXX, 19 XX AT XXX A.M.
TO BE NOTIFIED

BOND NO. 109202
COMPLAINT NO. L1719286
DATE _____
DEPOSIT NO. _____
DATE OF BIRTH 10 04 65
ARREST DATE 12 3 86 PLACE W.B.
RELEASE DATE 12 7 86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

X Charles Woodland
DEFENDANT
X 1101 Bourbon Manor
ADDRESS
X [redacted] 483-0828
SURETY

ADDRESS
X Joanne W. Hughes for the State of LA.
SURETY
7180 Whitmore Pl.
ADDRESS
PHONE # WK 483-4778 HM 244-7164

Verbal order of Hon. Porteous Judge 24th Judicial
Court, received by [illegible] on
12-87-86 at 6:30p, and verified by
on at

DEPUTY SHERIFF

DEC 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

CLERK OF COURT

Williams, George J. Jr. 12-23-86

Form No. B-002
Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON

24TH JUDICIAL **COURT**

PERSONAL SURETY BAIL UNDERTAKING

WILLIAMS, GEROGE J JR having been arrested for the crime of RS 1434

and having been admitted to bail in the sum of FIVE THOUSAND Dollars ($ 5,000.00) by order of the Hon. PORTEOUS, Judge of the 24TH JUDICIAL Court for the Parish of Jefferson,

I, WILLIAMS, GEORGE J SR of 6107 6TH AVE MARRERO LA

I, _____ of _____

hereby undertake that the above named WILLIAMS, GEORGE J JR will appear at all stages of the proceedings in the 24TH JUDICIAL Court to answer that charge or any related charge, and will at all times hold himself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and sentence, and will not leave the state without written permission of the Court; and that if he fails to perform any of these conditions, I will pay this Court the sum of FIVE THOUSAND Dollars ($ 5,000.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24TH JUDICIAL COURT ON THE _____ DAY OF _____, 19____ AT _____ A.M.

TO BE ~~NOTIFIED~~ NOTIFIED

BOND NO. 109114

COMPLAINT NO. K L1572786

DATE _____

DEPOSIT NO. _____

DATE OF BIRTH 041957

ARREST DATE 122386 PLACE 3RD DIST

RELEASE DATE 122386 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

689-3276
DEFENDANT

Rt 1, Box 95C
ADDRESS

George Williams
SURETY

ADDRESS

SURETY

6107 6TH Ave Marr.
ADDRESS
Phone 340-1655

Verbal order of Hon. PORTEOUS Judge, 24TH JUDICIAL Court, received by SGT J CAMBRE on 122386 at JPCC INTAKE BOOKING, and verified by _____ on _____ at _____.

SGT D S WOLFSON
DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

Walker, Benita Kay
12-22-86

Rev. 5-77

STATE OF LOUISIANA
PARISH OF JEFFERSON 24thdsit **COURT**

I, BENITA KAY WALKER
(NAME)

Of 1743 P.O. BOX LACOMBE, LA.
(STREET ADDRESS) CITY STATE

Having been arrested for the crime(s) of: ATT THEFT & CARRY WEAPON
and having been admitted to bail in the sum of SEVENTEEN HUNDRED FIFTY Dollars
($1750.00) by order of the Hon. G. THOMAS PORTEOUS Judge of the
24thdsit Court for the Parish of Jefferson.

I hereby undertake that I will appear at all stages of the proceedings in the 24thdsit Court to answer that charge or any related charge, and will at all times hold myself amenable to the orders and process of the Court, and, if convicted, will appear for pronouncement of the verdict and the sentence, and will not leave the state without written permission of the court:

BOND NO. 109084-D
COMPLAINT NO. L 14907-86
DATE
DEPOSIT NO.
DATE OF BIRTH W/F 122662
ARREST DATE 12-22-86 PLACE HARVEY
RELEASE DATE 12-22-86 PLACE JPCCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SET FORTH.

DEFENDANT'S BAIL UNDERTAKING (P.B.U.)

If I fail to perform any of these conditions, I will pay to this Court the sum of SEVENTEEN HUNDRED FIFTY Dollars ($ 1750.00) after said bail has been forfeited in accordance with the law.

DEFENDANT'S PERSONAL DEPOSIT BOND UNDERTAKING (CASH)

I hereby deposit and the Jefferson Parish Sheriff's Office acknowledges receipt of the sum of X X X X X X X X X X Dollars ($ X X X X X); and if I fail to perform any of these conditions, this deposit will be forfeited in accordance with the law.

DEC 23 11 08 AM '86

I HEREBY AGREE TO APPEAR IN THE 24th dsit COURT ON THE _____ DAY OF _____, 19 ____ AT _____ A.M.
TO BE NOTIFIED

X Benita Walker
DEFENDANT

X 1743 P.O. Box Lacombe, LA.
ADDRESS

G. THOMAS PORTEOUS
Verbal order of Hon. _____, Judge,
24thdsit Court, received by SGT J CAMBRE on
_____ at _____, and verified by
_____ on _____ at _____

SGT J CAMBRE
DEPUTY SHERIFF

DEC 1986
RECEIVED
JEFFERSON PARISH SHERIFF'S OFFICE

JPSO 2.182 ORIGINAL COPY TO CLERK OF COURT

Form No. B-002
Rev. 5-77

Young, Cary
12-22-86

STATE OF LOUISIANA
PARISH OF JEFFERSON

24th Judicial COURT

PERSONAL SURETY BAIL UNDERTAKING

Cary Young having been arrested for the crime of
14:95, 40-96
and having been admitted to bail in the sum of Seven Hundred fifty
Dollars ($ 750.00) by order of the Hon. Jl. Parilleaux, Judge of
the 24th Judicial Court for the Parish of Jefferson,
I, Sandra Young of 169 Willowbrook Dr. Metairie La.
I, of
hereby undertake that the above named Cary Young
will appear at all stages of the proceedings in the 24th Judicial
Court to answer that charge or any related charge, and will at all times hold himself amenable
to the orders and process of the Court, and, if convicted, will appear for pronouncement of the
verdict and sentence, and will not leave the state without written permission of the Court; and
that if he fails to perform any of these conditions, I will pay this Court the sum of Seven Hundred fifty
Dollars ($ 750.00) after said bail has been forfeited in accordance with the law.

I HEREBY AGREE TO APPEAR IN THE 24th Judicial COURT ON
THE _____ DAY OF _____, 19__ AT _____ A.M.
TO BE NOTIFIED

BOND NO. 109060-D
COMPLAINT NO. L-14510-86
DATE
DEPOSIT NO.
DATE OF BIRTH 7-12-62
ARREST DATE 12.22.86 PLACE W/B
RELEASE DATE 12-22-86 PLACE JPCC

THE ADDRESS, SHOWN HEREIN IS TRUE AND CORRECT, AND IF CHANGED FOR ANY REASON WHATSOEVER, IT SHALL BE THE DUTY OF THE PERSON MAKING BOND AND/OR HIS SURETY TO NOTIFY THE CLERK OF THIS COURT, WRITING OF ANY SUCH CHANGE OF ADDRESS, BECAUSE ANY NOTICES SENT TO THE ADDRESS STATED HEREIN WILL SUFFICE, UNLESS, OTHERWISE CHANGED IN WRITING, AS HEREINABOVE SETFORTH.

Cary Young
DEFENDANT
2350 Park Place Apt 66 Gretna
ADDRESS

SURETY

ADDRESS

Mrs. Sandra W. Young
SURETY
169 Willowbrook Dr. Metairie
ADDRESS
Phone # 393-0802

Verbal order of Hon. D. V. Welty, Judge,
1st Justice of the Peace Court, received by Dep E. Stell on
12-22-86 at 10:30 Am, and verified by
Same on Same at

R.O.R.
NOTIFY - R.O.R.
ROOM 806

DEPUTY SHERIFF

CLERK OF COURT

DEC 1986
RECEIVED

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 12, 2010

The Honorable Claire McCaskill
Chairman
The Honorable Orrin G. Hatch
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Madam Chairman and Vice Chairman:

This supplements our previous responses to your letter, dated August 25, 2010, regarding a request by Judge G. Thomas Porteous, Jr., for the Committee's assistance in obtaining materials from the Department of Justice in connection with the Senate impeachment trial proceedings against him.

As you know, the Department has already produced documents responsive to your letter on several occasions, in addition to those we are producing today. While our public disclosure of these records might be prohibited by the Privacy Act, we have provided them to the Committee in response to your request and pursuant to 5 U.S.C. 552a(b)(9). Nonetheless and as we have discussed with your staff, many of these documents implicate significant individual privacy interests and, accordingly, we request that you treat them with appropriate sensitivity. If you would like assistance in redacting particular documents for use in the impeachments proceedings in order to protect those privacy interests, please let us know.

1. The FBI has processed the 302s from our investigations of Judge Porteous, notwithstanding our view that all of those that are relevant to the impeachment proceedings have already been produced. Consistent with our conversations with your staff, the FBI prioritized its efforts by re-processing all 302s of individuals who have been identified by the parties as witnesses in the impeachment proceedings, none of whom asked the FBI to protect the confidentiality of their interviews, and those 79 pages were produced to you on September 10, 2010. An additional 103 pages were produced to you on September 11, 2010, and an additional 147 pages have been produced to you today.

2. As you know from our letter, dated June 25, 2009, to House Judiciary Committee Chairman Conyers, the 309 pages of documents we produced pertaining to the Senate confirmation of Judge Porteous bear very limited redactions of personal information,

such as phone numbers, social security numbers, and the names of law enforcement personnel, as well as text that would identify individuals who specifically asked the FBI to protect their identities. These redactions are consistent with the FBI's long-standing practice of protecting the identities of individuals who provide information to the Bureau based upon an express promise of confidentiality. Disclosure of information that would reveal their identities also would discourage such individuals from cooperating with our law enforcement efforts in the future. We have reviewed these documents to restore other text and seven pages of reprocessed documents have been delivered to your today. If you believe there is particular information in a specific redaction that you consider to be necessary to the impeachments proceedings, please let us know.

3. As you know, the individual whose interview is set forth in the document labeled PORT000000721 notified the FBI that he no longer wanted the FBI to protect his identity and an unredacted version of that document was produced to the Committee in pdf format on September 9, 2010.

4. In response to your request, a revised version of the FBI 302, dated December 18, 2002, regarding the interview of Mr. Norman Stotts, which contained more limited redactions was produced to the Committee on September 3, 2010. While the document still bears very limited redactions of information that implicates individual privacy interests, text reporting Mr. Stotts' comments about the Marcottes has been largely restored because we understand that they are listed as witnesses in the pending impeachment proceedings. We do not believe that the remaining, minimal redactions will interfere in any meaningful way with a clear understanding of Mr. Stotts' statements during this interview. Please let us know if you need additional information about it.

5. The FBI reviewed again the documents from this 22 page collection, pertaining to Judge Porteous's compliance with a bankruptcy order and, as a result, two additional pages have been delivered to the Committee today. These reprocessed pages bear very limited redactions of non-substantive information, namely the file number and the identity of a law enforcement officer. There were minimal redactions in the versions of some of the remaining documents in this collection, which we provided to the House Judiciary Committee on October 23, 2009. The FBI has advised that no additional text can be provided from the remaining documents without revealing the identity of an individual whose cooperation with the FBI was based upon an express promise of confidentiality.

6. The Department has substantial confidentiality interests in its internal memoranda pertaining to decisions about whether or not to seek indictments or otherwise undertake criminal proceedings. The confidentiality of these documents is important

to fostering the candid internal debate that we believe is essential to sound prosecutorial decision-making. Moreover, information about the rationale for the Department's decision not to prosecute Judge Porteous is set forth in our letter, dated May 18, 2007, to Chief Judge Edith H. Jones of the U.S. Court of Appeals for the Fifth Circuit, a copy of which has been provided to the Committee and to Judge Porteous. In fact, we believe that all of the factual information developed in our investigations of Judge Porteous has been made available to him.

We also note the disclosure of this type of document in the Nixon impeachment proceedings twenty-one years ago was made under very different circumstances. Unlike Judge Porteous, Judge Nixon was prosecuted and convicted. The impeachment proceedings flowed directly from that successful prosecution, and the Senate Impeachment Committee decided that it would hear evidence on Judge Nixon's claim that the Department's "investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Nixon's guilt or innocence." Letter to John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice from Senator Wyche Fowler, Jr., Chairman Senate Impeachment Committee (July 18, 1989). No such allegations have been or could be made in this matter since the Department never prosecuted Judge Porteous.

Moreover, the Department has produced extensive records relating to its investigation of Judge Porteous, even including grand jury materials, which Senator Fowler specifically excluded from his request. As a result, the Committee and the parties have a comprehensive factual record with which to evaluate Judge Porteous's conduct and the Articles of Impeachment pending against him. The burden of proving a criminal case beyond a reasonable doubt to a unanimous jury also distinguishes the Department's decision from the matters pending before the Senate in this trial, where a different standard applies. Accordingly, the Department's internal deliberative documents regarding whether or not to prosecute Judge Porteous have no bearing on the Senate proceedings and, consistent with our significant confidentiality interests and long-standing policy, we must respectfully decline to produce them.

7. Please see our response to item 6 above.

8. We believe that all of the Grand Jury transcripts have been produced pursuant to orders obtained by the Department or the House Judiciary Committee (House Committee). The order obtained by the House Committee authorized us to disclose transcripts only to that Committee, but it did not impose any limitations that would prohibit the Committee's disclosure of the transcripts to Judge Porteous or to the Senate. While we are advised by the House Committee that these materials have been previously provided to you and Judge Porteous, we obtained an Order, dated September 3, 2010, in response to your request, which authorized our disclosure to

you of the same transcripts for use in the impeachment proceedings. Please see our letters to you, dated September 7, 2010 and September 10, 2010, regarding these matters. We have identified only one transcript from the Department's investigation of Judge Porteous that was not included on your list; it is the transcript of Debra Mull, dated June 30, 2006. That document, which totaled 128 pages, was provided to you on September 10, 2010.

9. As we have previously advised your staff, the FBI has advised that there were no 302s generated for Robert Rees or Bruce Netterville in either the Wrinkled Robe or Judge Porteous investigations.

10. On September 7, 2010, we provided you with an unredacted version of the Affidavit in Support of the Title III wiretap interception application, dated August 27, 2001, and the related Court order in the Wrinkled Robe investigation. As you know, we provided these documents in accordance with the court orders that we obtained, in response to the Committee's request, which modify pre-existing orders sealing these documents. The terms of the modifying orders, which are themselves under seal and dated September 3, 2010, are set forth in our letters to the Committee, dated September 7, September 8, and September 10, 2010.

    Judge Porteous was not the subject or target of any Title III wiretap in the Wrinkled Robe investigation and the redacted versions of these materials include all sections relating to Judge Porteous as well as a significant additional portion of materials that place Bail Bonds Unlimited's corrupt scheme to "split" bonds in context. The remaining sections of the affidavit are unrelated to Judge Porteous and, instead, pertain to conduct of other individuals that occurred years after Judge Porteous left the state bench. These individuals, including numerous public officials, were investigated but not prosecuted due to the insufficiency of the evidence and some of them may not be aware that they were within the purview of this investigation. In our view, the unredacted versions of these documents implicate significant privacy and due process interests of these individuals. Consequently, and separate and a part from the terms of the court orders of September 3, 2010, we request that the Committee use redacted versions of these materials in the public proceedings to the extent consistent with the fairness to all parties. We are available to confer further with staff if that would be helpful.

11. Please see our response to item 10 above.

12. The Department has produced grand jury materials responsive to this item, as well as those responsive to items 13 - 19, pursuant to an Order, dated August 5, 2009, which permitted us to disclose them to "authorized personnel of the House of Representatives who are working on the impeachment inquiry of Judge G. Thomas

Porteous, Jr." In addition and in response to your request, we obtained a court order, dated September 3, 2010, authorizing our disclosure of materials responsive to this item, as well as those responsive to items 13 -19, and those materials were provided to the Committee with our letters, dated September 7, and September 8, 2010, in addition to our letter, dated September 10, 2010, which clarified the pertinent court order.

13. Please see our response to item 12 above.

14. Please see our response to item 12 above.

15. Please see our response to item 12 above.

16. Please see our response to item 12 above.

17. Please also see our response to item 12 above.

18. Please see our response to item 12 above.

19. Please see our response to item 12 above.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,

M. Faith Burton for

Ronald Weich
Assistant Attorney General

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NUMBER: 76-770 DIVISION: "B"

STATE OF LOUISIANA

VERSUS

[redacted]

FILED: _____ DEPUTY CLERK: _____

MOTION TO SET ASIDE CONVICTION

AND DISMISS PROSECUTION

Defendant, [redacted], through undersigned counsel, moves the Court to set aside his conviction and dismiss the prosecution pursuant to LSA-C.Cr.P. Art. 893 (B).

Defendant has successfully completed his period of probation, has not been convicted of any other criminal offense and has no criminal charges pending.

Respectfully Submitted,

E. Wayne W

E. WAYNE WALKER
Attorney at Law
819 Fourth Street
Gretna, LA 70053
(504) 368-5630

ORDER

Considering the foregoing Motion,

IT IS ORDERED that the State of Louisiana, show cause on the 17th day of June, 1993 at 9:00 o'clock am. why the foregoing Motion should not be granted.

Gretna, Louisiana, this 16 day of June, 1993.

JUDGE

FILED FOR RECORD
93 JUL 29 PM 2 16

ON MINUTES
AUG 5 1993

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NUMBER: 76-770 DIVISION: B

STATE OF LOUISIANA

VERSUS

[redacted]

FILED: June 2, 1993 DEPUTY CLERK: J.G. Thomas

ORDER

Considering the foregoing Motion to Set Aside Conviction;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the conviction under docket number: 76-770, 24TH JUDICIAL DISTRICT COURT, DIVISION "B" which was pled under LSA-C.Cr.P. Art. 893 (B) is hereby set aside on this 7 day of June, 1993.

Gretna, Louisiana this 18 day of June, 1993.

JUDGE

ON MINUTES AUG 5 1993

PARISH OF JEFFERSON, LA.
DEPUTY CLERK

FILED FOR RECORD
93 AUG 29 PM 2 17

A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

No. 76-1505 Division "B"

STATE OF LOUISIANA

Vs.

[redacted]

Filed: _____ _____
Deputy Clerk

MOTION TO SET ASIDE CONVICTION AND DISMISS PROSECUTION

Defendant, [redacted] through undersigned counsel, moves the Court to set aisde his conviction and dismiss the prosecution pursuant to LSA-C.Cr.P. Art. 894(B).

Defendant has successfully completed his period of probation, has not been convicted of any other criminal offense and has no criminal charges pending.

RESPECTFULLY SUBMITTED,

Philip E. O'Neill

PHILIP E. O'NEILL
929 Fourth Street
Gretna LA 70053 361-1682

O R D E R

Considering the foregoing Motion, IT IS ORDERED That the State of Louisiana, show cause on the 14th day of November, 1991 at 9 o'clock A. M., why the foregoing Motion should not be granted.

GRETNA, LOUISIANA, This 5 day of Nov, 1991.

JUDGE

ON MINUTES
OCT 17 1991

PARISH OF JEFFERSON LA
COURT

RECORD

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

O R D E R

IT IS ORDERED that the Jefferson Parish Sheriff's Office show cause on the 14th day of November, 1991 at 9 o'clock A.M. in DIVISION "B" _____ why the record of arrest of [redacted] should not be expunged.

JUDGE

PLEASE SERVE:

Honorable Harry Lee, Sheriff
100 Huey P. Long Avenue
Gretna, Louisiana 70053

ON MINUTES
OCT 17 1991

PARISH OF JEFFERSON LA
RECORD
91 NOV 30 PM 0:01

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

No. 76-1505 Division "B"

STATE OF LOUISIANA

Vs.

JEFFERY J. DUHON

Filed: _____ _____
Deputy Clerk

ORDER

The following Motion and annexed affidavit considered, let all agencies and law enforcement offices including, but not limited to, the following:

A. Hon. Harry Lee, Sheriff, Jefferson Parish, Louisiana;

B. Hon. John M. Mamoulides, District Attorney, Jefferson Parish, Louisiana;

C. Hon. Jon C. Gegenheimer, Clerk, 24th Judicial District Court, Jefferson Parish, Louisiana;

D. Louisiana State Police, Criminal Records Section, 265 South Foster Drive, Baton Rouge, Louisiana 70806;

E. Col. Marlin A. Flores, Administrator of the Louisiana Bureau of Criminal Identification, Investigation and Statistics, also known as Bureau of Identification, see R.S. 15:581.1 et seq.

expunge and destroy any record of the arrest, photographs, fingerprints or any other information of any and all kinds of descriptions relating to the following:

Name:	Jeffery J. Duhon
Sex and Race:	White male
Date of Birth:	January 7, 1959
Item No.:	6-14206-76
Date of Arrest:	June 15, 1976
Arresting Agency:	Jefferson Parish Sheriff's Office

whether on microfilm, computer card or tape, or any other photographic, electronic or mechanical method of storing data. Further, such agencies, entities and law enforcement offices and particularly the ones listed above shall file a sworn affidavit to the effect that such records have been destroyed and that no notations or references including the foregoing motion and this order have been retained in any of their files or central depository which will or might lead to the inference that any record ever was on file with any

agency or law enforcement office and in particular the above-named entities provided, however, the original of the affidavit called for herein shall be kept by this Court and a copy of such affidavit shall be retained by the agency, entity or law enforcement office making same; all in accordance with R.S. 44:9 of the Louisiana Revised Statutes, as amended. Such agencies, entities and law enforcement offices shall file said affidavits on or before the _____ day of July, 1992, with the Clerk of the 24th Judicial District Court, Parish of Jefferson, State of Louisiana.

GRETNA, LOUISIANA, This 22 day of July, 1992.

JUDGE

ON MINUTES
JUL 23 1992

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

PLEASE SERVE:

Hon. Harry Lee, Sheriff
Jefferson Parish
Sheriff's Office
Gretna, Louisiana

Hon. John M. Mamoulides
District Attorney's Office
Jefferson Parish
Gretna, Louisiana

Hon. Jon C. Gegenheimer, Clerk of Court
24th Judicial District Court
Gretna, Louisiana

Louisiana State Police
Criminal Records Section
265 South Foster Drive
Baton Rouge, Louisiana

Col. Marlin A. Flores, Deputy Secretary
Administrator of Louisiana Bureau of
Criminal Identification
State Police Headquarters
State Capitol
Baton Rouge, Louisiana

STATE OF LOUISIANA

VS

JEFFERY JOHN DUHON

24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA
NUMBER: 76-2277
DIVISION: "C"

PARISH OF JEFFERSON, LA

CERTIFICATE OF DESTRUCTION OF RECORDS

In compliance with the order of the Honorable Judge in the above captioned case, Louisiana State Police Headquarters, destroyed all records and reports on file with the Louisiana State Police Criminal Records Unit as they relate to the arrest of JEFFERY JOHN DUHON ON 9-24-76 FOR SIMPLE BURGLARY OF VEHICLE

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 76-~~2077~~ 1505 DIVISION "___"

STATE OF LOUISIANA

VERSUS

[redacted]

Filed:_____ _____
Deputy Clerk

MOTION TO EXPUNGE RECORD OF ARREST

NOW INTO COURT, through undersigned counsel comes, [redacted] who respectfully avers:

1.

[redacted] was arrested in the Parish of JEFFERSON under Police Item 9-10818-76, on September 15, 1976 for the charge of simple burglary. The charges were refused by the proper authorities on October 8, 1976 and the time limits for prosecution of the simple burglary has passsed. [redacted] is a white male whose birthdate is January 7, 1959.

2.

Mover requests the destruction of all evidence of this arrest and is entitled to it under the provisions of L.R.S. 44:9 et seq.

WHEREFORE [redacted] prays that after due proceedings heard there be judgment ordering the destruction of the arrest of the defendant.

Respectfully submitted,

Philip E. O'Neill

PHILIP E. O'NEILL
929 Fourth Street
Gretna, Louisiana 70053
(504) 361-1682

A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA

... ... a c/a to Atty issued to Sheriff

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 76-2277 DIVISION "B"

STATE OF LOUISIANA

VERSUS

[redacted]

Filed: _____ _____ Deputy Clerk

OCT 14

MOTION TO EXPUNGE RECORD OF ARREST

NOW INTO COURT, through undersigned counsel comes, J[redacted], who respectfully avers:

1.

[redacted] was arrested in the Parish of JEFFERSON under Police Item 9-10818-76, on September 15, 1976 for the charge of simple burglary. The charges were refused by the proper authorities on October 8, 1976 and the time limits for prosecution of the simple burglary has passsed. [redacted] is a white male whose birthdate is January 7, 1959.

2.

Mover requests the destruction of all evidence of this arrest and is entitled to it under the provisions of L.R.S. 44:9 et seq.

WHEREFORE [redacted] prays that after due proceedings heard there be judgment ordering the destruction of the arrest of the defendant.

Respectfully submitted,

PHILIP E. O'NEILL
929 Fourth Street
Gretna, Louisiana 70053
(504) 361-1682

A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

OCT 16 1991

O R D E R

IT IS ORDERED that the Jefferson Parish Sheriff's Office show cause on the 14th day of November, 1991 at 9 o'clock A.M. in DIVISION "B" _____ why the record of arrest of JEFFERY J. DUHON should not be expunged.

JUDGE

PLEASE SERVE:
Honorable Harry Lee, Sheriff through Honors Staff
100 Huey P. Long Avenue
Gretna, Louisiana 70053

A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH. JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

JUL 23 1992

10 : 01

Filed 10-8-76
Irene Hebert
Dy. Clerk.

762277
No. .....

The State of Louisiana

VS.

[redacted]

ANTONY L. WEAVER
~~5312 OAK, MARRERO, LA~~ 1023 East Dr. Westwego, La.

INFORMATION FOR

R.S.14:62 SIMPLE BURGLARY

JOHN M. MAMOULIDES
DISTRICT ATTORNEY

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

6213

THE STATE OF LOUISIANA

Parish of Jefferson

S.S.

Twenty-Fourth Judicial District

Twenty-Fourth Judicial District Court

JOHN M. MAMOULIDES, District Attorney, of the Twenty-Fourth Judicial District of the State of Louisiana, who, in the name and by the authority of the said State, prosecutes in its behalf, in proper person comes into the Twenty-Fourth Judicial District Court of the State of Louisiana, in and for the PARISH OF JEFFERSON and gives the said Court here to understand and be informed that one

76-1505 IDB BO
276
76-2228 IDB BO Jail
1036

[redacted] ANTHONY L. WEAVER SS J/M 11-14-57

late of the Parish aforesaid, on or about the TWENTY-FOURTH day of SEPTEMBER in the year of our Lord One Thousand Nine Hundred and SEVENTY-SIX with force and arms, in the Parish aforesaid, and within the jurisdiction of the Twenty-Fourth Judicial District Court of Louisiana, in and for the Parish aforesaid, violated R.S. 14:62 in that he did commit simple burglary of an automobile located 1732 Diane belonging to Ronald Malhiet

[redacted]

3/7/77
Dismissed because
sent in 76-1031
This date A.J.B.

contrary to the form of the Statute of the State of Louisiana, in such case made and provided, and against the peace and dignity of the State.

Assistant District Attorney of the Twenty-Fourth Judicial District

COMPLAINT NUMBER 9-10318-76

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

FILMED
OCT 12 '76

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/18/2004

GREG GUIDRY, 24th Judicial District Court Judge, Division E, Parish of Jefferson, Gretna, Louisiana, was interviewed regarding a lawsuit filed in his court entitled Bail Bonds Unlimited Inc. v. Mathew Dennis et al., (BBU v. DENNIS). GUIDRY was advised of the identity of the interviewing agents and the purpose of the interview. Judge GUIDRY then furnished the following information:

The first time Judge GUIDRY met Judge THOMAS PORTEOUS was when PORTEOUS was appointed to the Federal Bench. At the time Judge GUIDRY was an Assistant United States Attorney, for the Eastern District of Louisiana. As a result, Judge GUIDRY litigated matters before Judge PORTEOUS. Occasionally, Judge GUIDRY sees Judge PORTEOUS at different social functions.

Judge GUIDRY remembered the BBU v. DENNIS lawsuit filed in his court. GARY BIZAL represented the defendant's while KEN BECK represented BAIL BONDS UNLIMITED (BBU).

Judge GUIDRY granted the motion for a temporary restraining order on June 13, 2001 and set a hearing date for either June or July 2001. Judge GUIDRY believed the case was settled because after the temporary restraining order he did not hear from the parties.

Judge PORTEOUS never contacted Judge GUIDRY regarding the BBU v. DENNIS lawsuit. In fact, no one has contacted Judge GUIDRY regarding the lawsuit.

After reviewing a facsimile from BBU to Judge PORTEOUS regarding the BBU v. DENNIS litigation, Judge GUIDRY could not provide a legitimate reason for Judge PORTEOUS' review of documents regarding the BBU v. DENNIS litigation.

Investigation on 6/18/04 at Gretna, Louisiana

File # [redacted] Date dictated 6/18/04

by SA [redacted]

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

PORT Exhibit 2007

Volume 3 of 3, Part E
A. DEMONSTRATIVE EXHIBITS UTILIZED DURING THE COMMITTEE'S EVIDENTIARY HEARINGS (IN NUMERICAL ORDER)

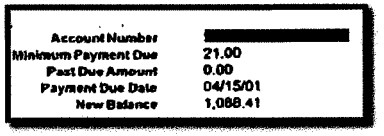
Summary of Porteous / Creely Curatorships

Year	Number of Curatorships x Dollar Amount	Total Dollar Amount of Curatorships
1988	18 x $150 OR 18 x $200	$2,700 OR $3,600
1989	21 x $200	$4,200
1990	33 x $200	$6,600
1991	28 x $200	$5,600
1992	44 x $200	$8,800
1993	28 x $200	$5,600
1994	20 x $200	$4,000
Total	192	$37,500 OR $38,400

HP Exhibit 190

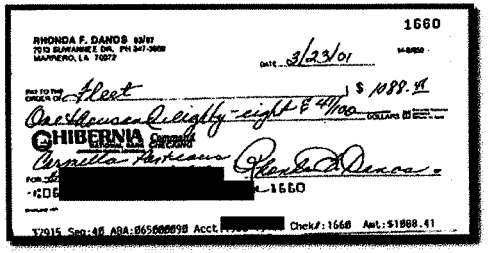
UNDISCLOSED PAYMENTS TO CREDITORS WITHIN 90 DAYS OF BANKRUPTCY – FLEET CREDIT CARD

March 19, 2001 – Fleet issues credit card statement reflecting balance of $1088.41, minimum payment of $21.00, due April 15, 2001



Account Number	[redacted]
Minimum Payment Due	21.00
Past Due Amount	0.00
Payment Due Date	04/15/01
New Balance	1,088.41

March 23,2001 – Rhonda Danos writes check to Fleet for $1,088.41, paying account in full.



1660

RHONDA F. DANOS
7013 SUWANEE DR.
MARRERO, LA 70072

Date 3/23/01

Pay to the order of Fleet $ 1088.41

One thousand eighty eight & 41/100

HIBERNIA

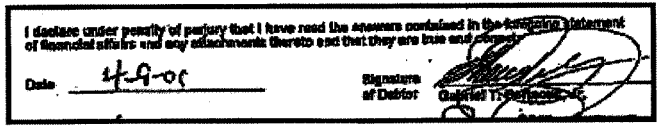
Armella Porteous Rhonda F. Danos

FOR [redacted] 1660

[redacted] Check#:1668 Amt:$1088.41

MARCH 28, 2001 – JUDGE PORTEOUS FILES FOR BANKRUPTCY.

April 9, 2001 – Judge Porteous signs Statement of Financial Affairs under penalty of perjury; does not disclose Fleet payment as a "payment ... to any creditor, made within 90 immediately preceding the commencement of this case."



I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date 4-9-01

Signature of Debtor [redacted]

HP Ex. 500

6220

UNDISCLOSED PAYMENTS TO CREDITORS WITHIN 90 DAYS OF BANKRUPTCY – TREASURE CHEST CASINO

March 2, 2001 – Judge Porteous gambles at Treasure Chest, takes out seven $500 markers, repaying four of them on March 3, and leaves casino owing $1,500.

March 27, 2001
Judge Porteous repays Treasure Chest $1,500 cash (source unknown).

CASH
CASH
CASH

Item #	Type	Sts	Date/Shft	Amount	Curr Bal	Pymt	
	CHP	A	4/10/01 S	500.00-			Repaid
00059019	MK-MRK	P	3/02/01 S	500.00	.00	3/03/01	
	CHP	A	3/03/01 G	500.00-			Repaid
00059013	MK-MRK	P	3/02/01 S	500.00	.00	3/27/01	
	CSH	A	3/27/01 G	500.00-			Repaid
00059012	MK-MRK	P	3/02/01 S	500.00	.00	3/27/01	
	CSH	A	3/27/01 G	500.00-			Repaid
00059011	MK-MRK	P	3/02/01 S	500.00	.00	3/27/01	
	CSH	A	3/27/01 G	500.00-			Repaid
00059002	MK-MRK	P	3/02/01 S	500.00	.00	3/03/01	
	CHP	A	3/03/01 G	500.00-			Repaid
00059001	MK-MRK	V	3/02/01 S	500.00	.00	0/00/00	
00059000	MK-MRK	P	3/02/01 S	500.00	.00	3/03/01	Repaid 3/3/01

Item #	Type	Sts	Date/Shft	Amount	Curr Bal	Pymt	
	CHP	A	3/03/01 G	500.00-			
00058997	MK-MRK	P	3/02/01 S	500.00	.00	3/03/01	Repaid 3/3/01
	CHP	A	3/03/01 G	500.00-			

MARCH 28, 2001 – JUDGE PORTEOUS FILES FOR BANKRTUPCY.

April 9, 2001 -- Judge Porteous signs Statement of Financial Affairs under penalty of perjury; fails to disclose Treasure Chest payment as a "payment ... to any creditor, made within 90 days immediately preceding the commencement of this case."

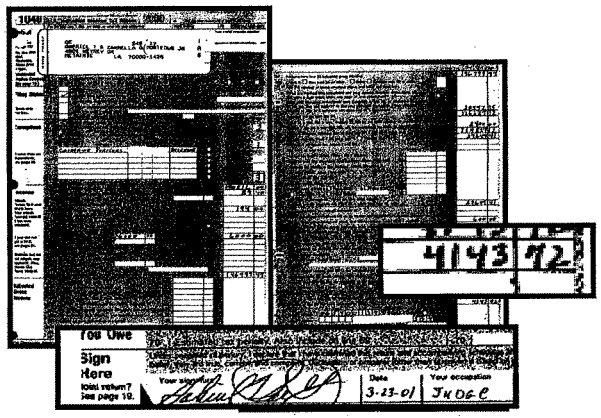
I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

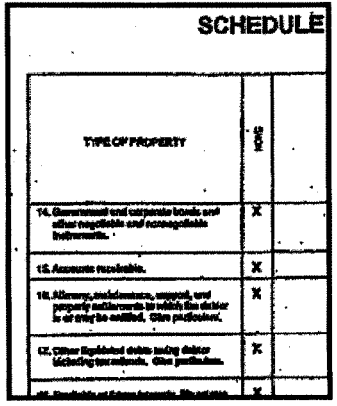
Date 4-9-01 Signature of Debtor

HP Ex. 501

6221

JUDGE PORTEOUS'S UNDISCLOSED TAX REFUND





March 23, 2001 – Judge Porteous files 2000 tax return claiming $4,143.72 tax refund.

April 9, 2001 – Judge Porteous does not report anticipated refund as a "liquidated debt owing debtor including tax refunds"; "NONE" box " marked with an "X."

April 13, 2001 – Judge Porteous receives $4,143.72 tax refund direct deposited into his checking account.

03-27 Deposit
04-02 ACH Credit Usc Treas 310 [redacted] Fed Salary
04-13 ACH Credit Us Treasury 220 [redacted] Irs Tax Refund
2,000.00
7,705.51
4,143.72

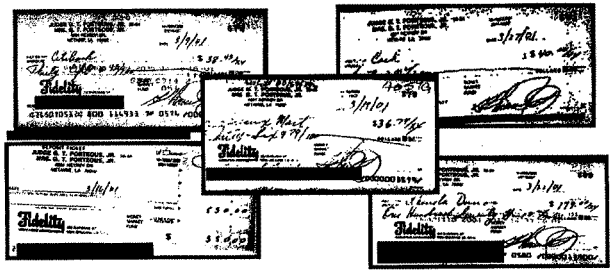
HP Ex. 502

6222

JUDGE PORTEOUS'S UNDISCLOSED FIDELITY MONEY MARKET ACCOUNT

From at least 1997 through 2004 – Judge Porteous actively uses a Fidelity Money Market account .

March 2001 – Judge Porteous writes checks on and makes deposit into the Fidelity account, including a check dated March 27, 2001.



MARCH 28, 2001 – JUDGE PORTEOUS FILES FOR BANKRUPCTY.

Post-Filing – Judge Porteous writes checks on Fidelity account dated March 30 and April 4, 2001.

April 9, 2001 – Judge Porteous does not disclose Fidelity account on Schedule of Assets – discloses only Bank One account.

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Bank One Checking Account No. [redacted]	C	100.00

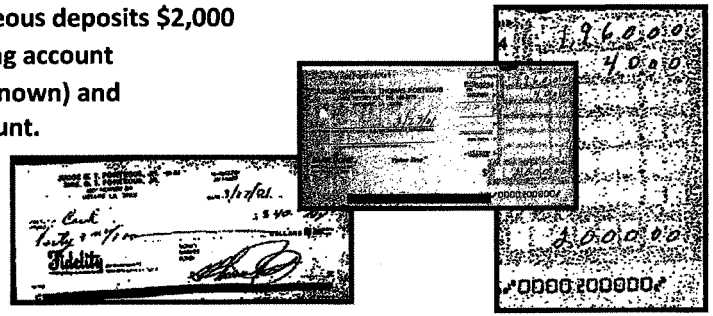
HP Ex. 503

6223

UNDISCLOSED ACCOUNT BALANCE (BANK ONE ACCOUNT)

March 27, 2001 – Judge Porteous deposits $2,000 into his Bank One checking account – $1,960 cash (source unknown) and $40 from his Fidelity account.

Balance on March 27, 2001 is at least $2,000.



MARCH 28, 2001 – JUDGE PORTEOUS FILES FOR BANKRUPTCY.

April 9, 2001 – Judge Porteous falsely states that the "Current Market Value" of the Bank One checking account is $100.

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Bank One Checking Account No. [redacted]	C	100.00

HP Ex. 504

6224

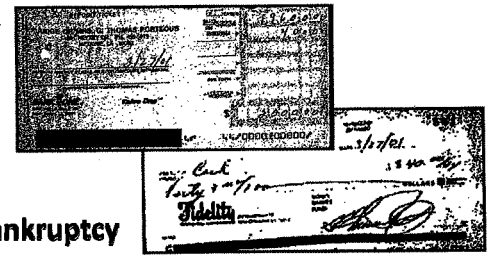
UNDISCLOSED CREDITOR
(GRAND CASINO GULPORT)

FEBRUARY 27, 2001 – Judge Porteous takes out two $1,000 markers from Grand Casino Gulfport (131405, 131402), and leaves the casino owing $2,000.

Grand Casino Gulfport Records

CRDT MRKR DEPT CB01	031601 MK131402		1000.00	2000.00
CRDT MRKR ISSD 0103	022701 MK131405		1000.00	2000.00
CRDT MRKR ISSD 0103	022701 MK131402		1000.00	1000.00

MARCH 27, 2001 – Judge Porteous deposits $2,000 into his BankOne checking account - $1960 cash (source unknown) and $40 from his Fidelity account.



MARCH 28, 2001 – Judge Porteous files for bankruptcy (markers remain outstanding).

APRIL 5-6, 2001 – Markers clear Judge Porteous's Bank One account.

Judge Porteous's Bank One Statement

131402*	1,000.00	04-05
131405*	1,000.00	04-06

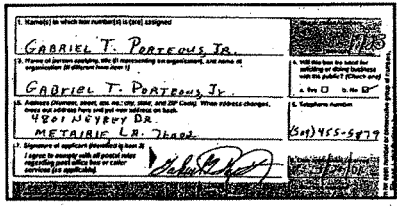
APRIL 9, 2001 -- Judge Porteous signs under penalty of perjury Bankruptcy Schedules that do not include Grand Casino Gulfport as an unsecured creditor.

HP Ex. 505

6225

USE OF FALSE NAME AND POST OFFICE BOX ON INITIAL BANKRUPTCY PETITION

March 20, 2001 – Judge Porteous applies for and obtains PO Box .


GABRIEL T. PORTEOUS, JR.

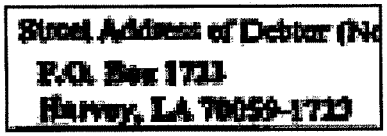
GABRIEL T. PORTEOUS, JR.

4801 JEFFERY DR.
METAIRIE LA. 70006

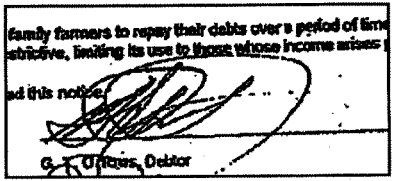
(504) 455-5879

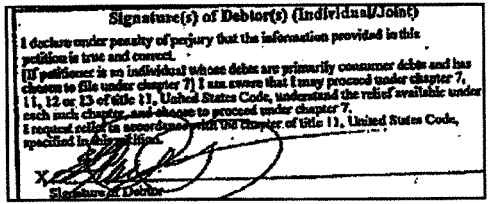
March 28, 2001 – Judge Porteous files initial Bankruptcy Petition under the false name "G.T. Ortous" and the PO Box address .

Ortous, G. T.


P.O. Box 1721
Harvey, LA 70059-1721

Judge Porteous signs Petition twice as "G.T. Ortous," including declaration "under penalty of perjury that the information provided in this petition is true and correct."


family farmers to repay their debts over a period of time
strictive, limiting its use to those whose income arises
d this notice.
G. T. Ortous, Debtor


Signature(s) of Debtor(s) (Individual/Joint)
I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.
X
Signature of Debtor

HP Ex. 506

6226

FALSE REPRESENTATION AS TO
NO GAMBLING LOSSES WITHIN ONE YEAR

STATEMENT OF FINANCIAL AFFAIRS

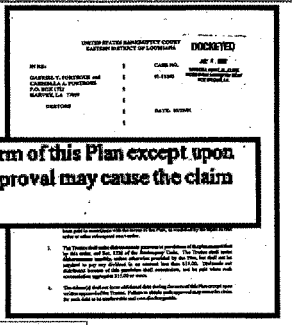
8. Losses

None ☑ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

HP Ex. 507

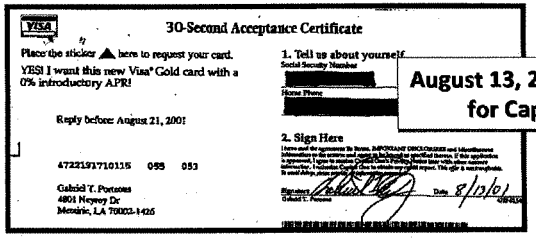
JUDGE PORTEOUS'S INCURRING DEBT WHILE IN BANKRUPTCY

June 28, 2001 -- Bankruptcy Judge Greendyke signs Order providing that Judge Porteous may not "incur additional debt during the term of this [Bankruptcy] Plan except upon written approval of the Trustee. ..."



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA
DOCKETED

4. The debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable.



VISA

30-Second Acceptance Certificate

Place the sticker ▲ here to request your card.

YES! I want this new Visa® Gold card with a 0% introductory APR!

Reply before: August 21, 2001

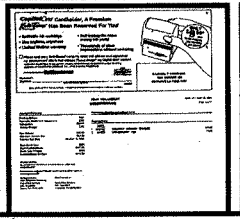
4722191710115 055 053

Gabriel T. Porteous
4801 Newsey Dr
Metairie, LA 70003-1426

1. Tell us about yourself
Social Security Number [redacted]
Home Phone [redacted]

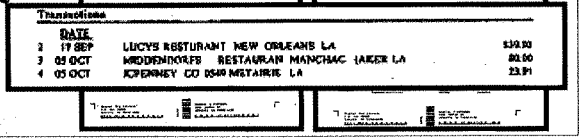
2. Sign Here
Signature Gabriel T. Porteous Date 8/10/01

August 13, 2001 -- Judge Porteous applies for Capital One VISA Card.



POWER ANTENNA

September 17, 2001 -- Judge Porteous's Capital One VISA card first used at "Lucy's" restaurant near Federal Courthouse. Card used throughout bankruptcy .



Transactions

	DATE		
2	17 SEP	LUCYS RESTURANT NEW ORLEANS LA	$30.93
3	05 OCT	MIDDENDORFS RESTAURAN MANCHAC LAKER LA	80.00
4	05 OCT	JCPENNEY CO 0540 METAIRIE LA	23.91

HP Ex. 508

6228

JUDGE PORTEOUS'S USE OF SECRETARY DANOS TO PAY HIS CASINO DEBTS IN APRIL 2001

April 6, 2001 (9 days after filing for bankruptcy) – Judge Porteous obtains increase in credit line at Beau Rivage to $4,000; leaves casino owing $1,000.

BEAU RIVAGE - RESTRICTED
CREDIT HISTORY

Customer Name: PORTEOUS, GABRIEL THOMAS

Credit Limit: $4,000
Authorizer: KSL Date: 4/06/01

April 24, 2001 – Judge Porteous withdraws $1,000 from IRA by check; endorses check to Danos.

April 30, 2001 – Danos writes $1000 check to Beau Rivage referencing "Gabriel Thomas Porteous, Jr."

HP Ex. 510

Pre-Bankruptcy Payments to Fleet Account - 2001

Date of Statement	Date of Payment Check	Date Payment Due	Amount Due	Amount Paid	Account Used
January 17, 2001	February 1, 2001	February 15, 2001	$1,044.46	$100	Judge Porteous's Bank One Account
February 13, 2001	March 1, 2001	March 19, 2001	$1,251.07	$315	Judge Porteous's Bank One Account
March 15, 2001	March 23, 2001 (five days prior to bankruptcy)	April 15, 2001	$1,088.41	$1,088.41 (paid in full)	Rhonda Danos's checking account

HP Ex. 513

FEBRUARY 27 - APRIL 4-5, 2001 – EVENTS ASSOCIATED WITH JUDGE PORTEOUS'S BANKRUPTCY FILING

FEBRUARY 27, 2001 – JUDGE PORTEOUS TAKES OUT MARKERS AT GRAND CASINO GULFPORT, LEAVES CASINO OWING $2,000.

MARCH 2, 2001 – JUDGE PORTEOUS TAKES OUT MARKERS FROM TREASURE CHEST, LEAVES CASINO OWING $1,500.

MARCH 20, 2001 – JUDGE PORTEOUS OBTAINS A POST OFFICE BOX.

MARCH 23, 2001 – JUDGE PORTEOUS FILES TAX RETURN CLAIMING $4,000 REFUND.

MARCH 23, 2001 – JUDGE PORTEOUS HAS RHONDA DANOS PAY FLEET CREDIT CARD IN FULL, $1088.41.

MARCH 27, 2001 – JUDGE PORTEOUS PAYS BACK TREASURE CHEST $1,500 CASH (UNKNOWN SOURCE).

MARCH 27, 2001 – JUDGE PORTEOUS DEPOSITS $2,000 INTO CHECKING ACCOUNT ($1960 CASH (UNKNOWN SOURCE) AND $40 CHECK FROM FIDELITY ACCOUNT).

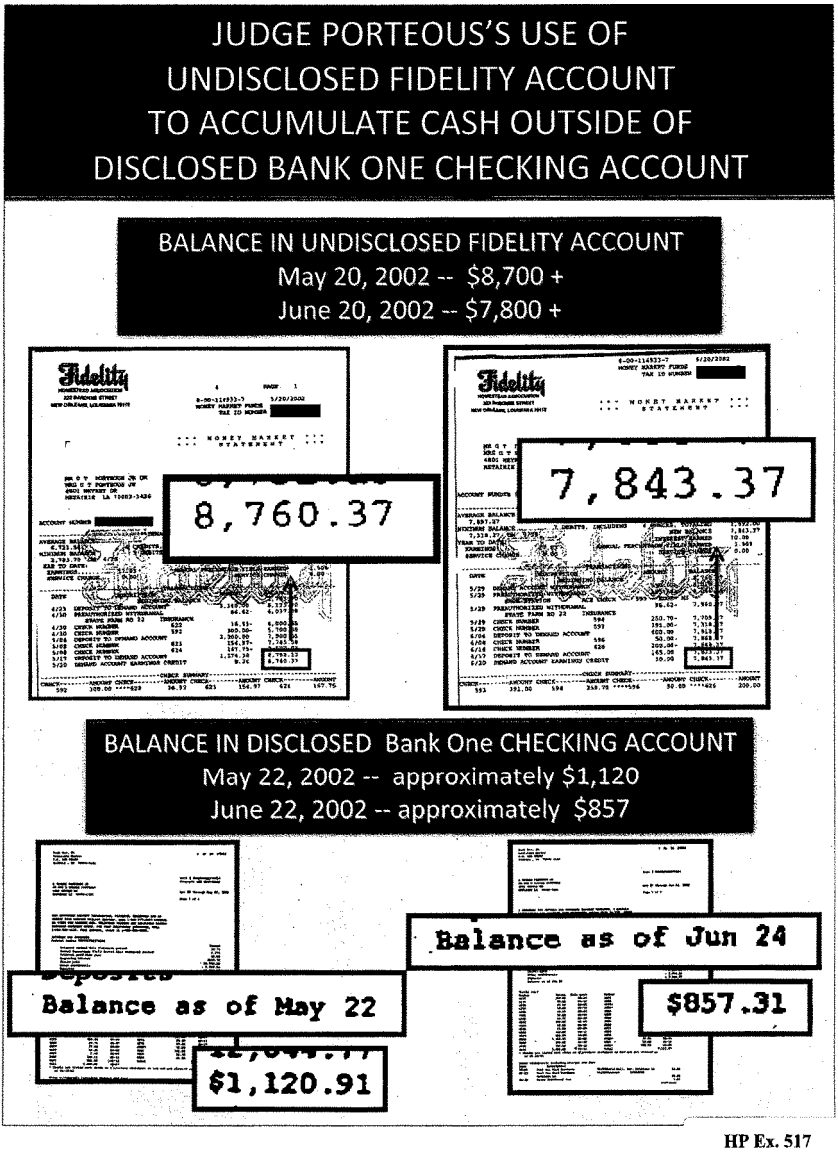
MARCH 28, 2001 – JUDGE PORTEOUS FILES INITIAL BANKRUPTCY PETITION UNDER THE NAME "G.T. ORTOUS" AND USES THE POST OFFICE BOX AS HIS ADDRESS. JUDGE PORTEOUS SIGNS THE INITIAL PETITION TWICE AS "G.T. ORTOUS."

APRIL 4-5, 2001 – GRAND CASINO GULFPORT MARKERS OF $2,000 CLEAR JUDGE PORTEOUS'S BANK ONE ACCOUNT.

HP Ex. 514

JUDGE PORTEOUS'S USE OF FIDELITY ACCOUNT
PRE-BANKRUPTCY TO PAY GAMBLING DEBTS
May 13, 1998
$2,500 to Treasure Chest
February 7, 2000
$2,000 to Treasure Chest
July ___ 1999
$300 to Beau Rivage.
September 28, 2000
$490 to Casino Magic
February 3, 2000 –
$300 to Boomtown
November 30, 2000
$1,600 to Treasure Chest

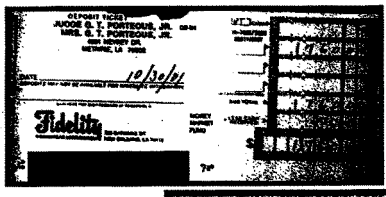
HP Ex. 515

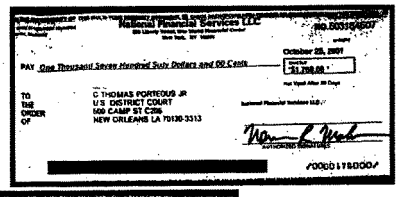

JUDGE PORTEOUS'S USE OF
UNDISCLOSED FIDELITY ACCOUNT
TO ACCUMULATE CASH OUTSIDE OF
DISCLOSED BANK ONE CHECKING ACCOUNT
BALANCE IN UNDISCLOSED FIDELITY ACCOUNT
May 20, 2002 -- $8,700 +
June 20, 2002 -- $7,800 +
Fidelity
8,760.37
Fidelity
7,843.37
BALANCE IN DISCLOSED Bank One CHECKING ACCOUNT
May 22, 2002 -- approximately $1,120
June 22, 2002 -- approximately $857
Balance as of May 22
$1,120.91
Balance as of Jun 24
$857.31

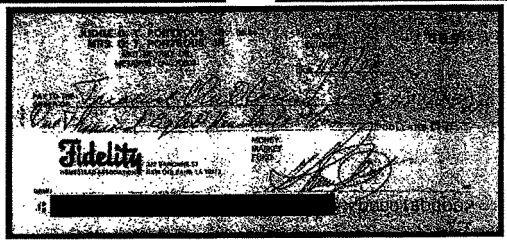
HP Ex. 517

JUDGE PORTEOUS'S USE OF UNDISCLOSED FIDELITY ACCOUNT IN BANKRUPTCY TO PAY CASINO DEBTS

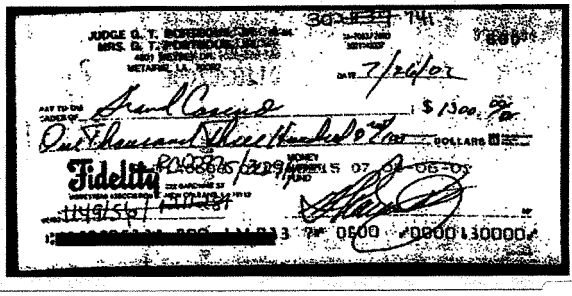
October-November 2001
Judge Porteous deposits $1,760 from IRA into Fidelity account, writes check to Treasure Chest for $1,800.




PAY One Thousand Seven Hundred Sixty Dollars and 00 Cents
TO THE ORDER OF
C THOMAS PORTEOUS JR
US DISTRICT COURT
500 CAMP ST C256
NEW ORLEANS LA 70130-3313



July 26, 2002
Judge Porteous writes check to Grand Casino for $1,300.



HP Ex. 518

Judge Porteous's Set-Aside of Aubry Wallace's 1991 Burglary Conviction - Legal Background

For a court to set aside a conviction under Article 893 of the Louisiana sentencing laws:

1) the sentence must have been imposed under Article 893;
2) the court must "find[] at the conclusion of the probationary period that the probation of the defendant has been satisfactory …."

Article 893E of Louisiana Code of Criminal Procedure

E. When the imposition of sentence has been suspended by the court for the first conviction only, as authorized by this Article, and the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution and the dismissal of the prosecution shall have the same effect as acquittal, [. . . .]

HP Ex. 519

TWENTY-FOURTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON

HARD LABOR SUSPENDED

DIVISION A DOB [redacted]

NO. 89-2360 ITEM NO. R-6745-89

COMMITMENT

WHEREAS AUBRY H. WALLACE

was by due form of law duly PLEAD before our 24th Judicial District Court for the Parish of Jefferson of Violating Revised Statute 14:62 (SIMPLE BURGLARY)

and was thereupon sentenced to imprisonment at hard labor, for THREE(3) YEARS, GIVING THE DEFENDANT CREDIT FOR TIME SERVED.

and defendant is committed to the Louisiana Department of Corrections for execution of said sentence in conformity with L. S.A. - R. S. 15:824.

SENTENCE SUSPENDED AND DEFENDANT PLACED ON ACTIVE PROBATION FOR A TERM OF TWO(2) YEARS SPECIAL CONDITION OF PROBATION IS THAT DEFENDANT PAY A $10.00 A MONTH PROBATION SUPERVISION FEE.

NOW THEREFORE, You, the said Sheriff, are hereby commanded to carry out in full every part of the aforesaid sentence and for so doing this shall be your sufficient warrant and authority.

WITNESS: D. THOMAS PORTEOUS, JR. JUDGE

presiding in the 24th Judicial District Court, Division A

Parish of Jefferson, in the Hall of Sittings of the same, in the City of Gretna,

this 26TH day of JUNE

in the year of our Lord, one thousand nine hundred and FIVE HUNDRED AND TEN

ATTEST

JUL 17 1990

CLERK

Judge Porteous's Set-Aside of Aubry Wallace's 1991 Burglary Conviction

Wallace was not sentenced under Article 893.

HP Ex. 520

Judge Porteous's Set-Aside of Aubry Wallace's 1991 Burglary Conviction

Judge Porteous terminated Wallace's probation unsatisfactorily upon Wallace's incarceration for PCP and Cocaine felony offense (December 1991).

STATE OF LOUISIANA
VS
Aubry Wallace

COURT: 24th Judicial District
PARISH: Jefferson
DOCKET NO.: 88-2360

PETITION FOR CAUSE

Comes now Willard H. Tucker, Probation and Parole Agent, [illegible] Louisiana Department of Corrections, presenting an official report on the conduct and attitude of probationer Aubry Wallace

who was placed on probation by the Honorable Thomas Porteous

on the 26th day of June , 1990 , who fixed the period of probation at two years , and imposed the terms and conditions of probation previously adopted by the court,

AND RESPECTFULLY presenting petition for action of the Court for cause as follows: Subject was sentenced on 3/28/91 under Jeff-88-0001 to five years hard labor. Subject was received at Elayn Hunt Correctional Center and is presently incarcerated with the Department of Corrections in Main Training Facility North.

PRAYING that the court will order that the subject's probation under Jeff-88-2360 be terminated unsatisfactorily.

IT IS ORDERED BY THE COURT that subject's probation is hereby terminated unsatisfactorily.

ORDER OF THE COURT

CONSIDERING THE foregoing report of the Probation and Parole Agent,

IT IS THE COURT that subject's probation is hereby terminated

This done on the 11 day of Dec 19 91

JUDGE

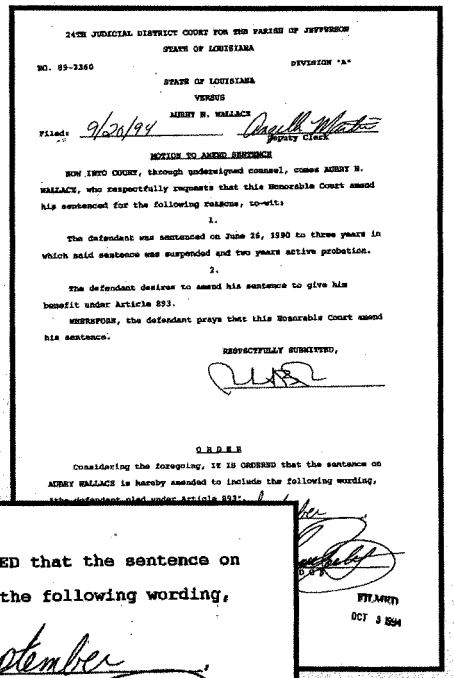
ON MINUTES DEC 13 1991

HP Ex. 521

Judge Porteous's Set-Aside of Aubry Wallace's 1991 Burglary Conviction

September 20, 2004 Motion to Amend Sentence filed.

September 22, 2004
Judge Porteous holds hearing and amends Wallace's sentence to reflect that Wallace pleaded guilty under Article 893.



24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 85-2360 DIVISION "A"

STATE OF LOUISIANA
VERSUS
AUBRY B. WALLACE

Filed: 9/20/94 Deputy Clerk

MOTION TO AMEND SENTENCE

NOW INTO COURT, through undersigned counsel, comes AUBRY B. WALLACE, who respectfully requests that this Honorable Court amend his sentenced for the following reasons, to-wit:

1.

The defendant was sentenced on June 26, 1990 to three years in which said sentence was suspended and two years active probation.

2.

The defendant desires to amend his sentence to give him benefit under Article 893.

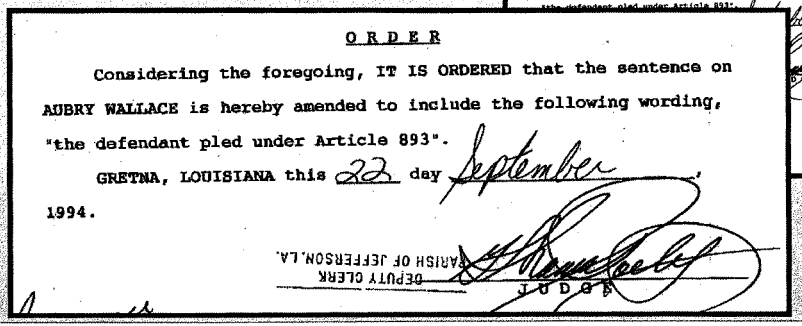
WHEREFORE, the defendant prays that this Honorable Court amend his sentence.

RESPECTFULLY SUBMITTED,

ORDER

Considering the foregoing, IT IS ORDERED that the sentence on AUBRY WALLACE is hereby amended to include the following wording, "the defendant pled under Article 893".

FILED
OCT 3 1994



ORDER

Considering the foregoing, IT IS ORDERED that the sentence on AUBRY WALLACE is hereby amended to include the following wording, "the defendant pled under Article 893".

GRETNA, LOUISIANA this 22 day September, 1994.

DEPUTY CLERK
PARISH OF JEFFERSON, LA.

JUDGE

HP Ex. 522

6238

Judge Porteous's Set-Aside of Aubry Wallace's 1991 Burglary Conviction

UMBER: 89-2360 D ISION:"A"

STATE OF LOUISIANA

VERSUS

AUBRY N. WALLACE

FILED: 10-14-94 DEPUTY CLERK:

ORDER

Considering the foregoing Motion to Set Aside Conviction;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the matter under docket number: 89-2360, 24TH JUDICIAL DISTRICT COURT, DIVISION "A" without entering a judgment of guilt under Article 893, all charges filed under the captioned case number be dismissed and be hereby set aside on this 14th day of October, 1994.

Gretna, Louisiana this 14th day of October, 1994.

JUDGE

FILMED

OCT 19 1994

October 14, 1994 – Judge Porteous issues order providing that "all charges filed under the captioned case number be dismissed and be hereby set aside ...."

HP Ex. 523

JUDGE PORTEOUS'S FINANCIAL DISCLOSURE FORM FOR CALENDAR YEAR 1996

Judge Porteous reports "No reportable liabilities."

	CREDITOR
X	NONE (No reportable liabilities.)

Judge Porteous fails to report Citibank 0426 credit card.

itibank AAdvantage — Citibank 0426

ccount Number

0426

AYMENT DUE DATE 01/06/97

Statement Date	Total Credit Line	Cash Advance Limit	New Balance
12/12/96	$16000	$16000	$14846.47

Judge Porteous certifies the information is "accurate, true, and complete to the best of my knowledge and belief . . . ."

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date 5/12/97

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

HP Ex. 524

JUDGE PORTEOUS'S FINANCIAL DISCLOSURE FORM FOR CALENDAR YEAR 1997

Judge Porteous reports "No reportable liabilities."

	CREDITOR
K	NONE (No reportable liabilities.)

Judge Porteous fails to report two MBNA credit card accounts as Code "K" ($15,000 or more), and Citibank 0426 and Travelers 0642 as Code "J" (less than $15,000).

MBNA 1290

PAYMENT DUE DATE	NEW BALANCE TOTAL
01/03/98	$18,146.85

MBNA 0877

PAYMENT DUE DATE	NEW BALANCE TOTAL
01/19/98	$15,569.25

Citibank 0426 (November balance in excess of $10,000)

Statement Date	Total Credit Line	Cash Advance Limit	New Balance
11/12/97	$19000	$16000	$16424.87
12/12/97	$19000	$16000	$424.20

Travelers 0642 (November balance in excess of $10,000)

PAYMENT DUE DATE	NEW BALANCE
12/23/97	11477.44
01/24/98	9378.76

Judge Porteous certifies the information is "accurate, true, and complete to the best of my knowledge and belief . . . ."

compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date 5/13/98

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

HP Ex. 525

JUDGE PORTEOUS'S FINANCIAL DISCLOSURE FORM FOR CALENDAR YEAR 1998

Judge Porteous reports "MBNA" and "Citibank" as Code "J" (less than $15,000).

VI. LIABILITIES. *(Includes those of spouse and dependent children; business, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 13-15 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	MBNA	Credit Card	J
2	Citibank	Credit Card	J
3			

Judge Porteous fails to report two MBNA credit card accounts as Code "K" ($15,000 or greater), and Travelers 0642 as Code "J" (less than $15,000).

	PAYMENT DUE DATE	NEW BALANCE TOTAL
1) MBNA 08770	01/20/99	$16,550.06

	PAYMENT DUE DATE	NEW BALANCE TOTAL
2) MBNA 1290	01/05/99	$17,155.76

3) Travelers 0642	New balance	$10,545.56
	Minimum payment due	$211.00
	Payment due date	01/22/99

Judge Porteous certifies the information is "accurate, true, and complete to the best of my knowledge and belief ...."

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date 5/13/99

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

HP Ex. 526

JUDGE PORTEOUS'S FINANCIAL DISCLOSURE FORM FOR CALENDAR YEAR 1999

Judge Porteous reports MBNA and Citibank as Code "J" (less than $15,000).

VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 10-11 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	MBNA	Credit Card	J
2	Citibank	Credit Card	J

Citibank 0426

Citibank AAdvantage
Account Number 0426
PAYMENT DUE DATE 01/04/00
Statement Date 12/10/99 | Total Credit Line $22000 | Cash Advance Limit $16000 | New Balance $22412.15

New Balance: $22412.15

Judge Porteous fails to report two MBNA credit card accounts, two Citibank accounts, and Travelers a account as Code "K" ($15,000 or greater).

MBNA 0877

ACCOUNT NUMBER 0877
PAYMENT DUE DATE 01/20/00
NEW BALANCE TOTAL $24,953.65

$24,953.65

Travelers 0642

Account Statement
Statement Date 12/29/99
Account number 0642
New balance $15,467.29
Past due amount $0.00

$15,467.29

MBNA 1290

ACCOUNT NUMBER 1290
PAYMENT DUE DATE 01/04/00
NEW BALANCE TOTAL $25,755.84

$25,755.84

Citibank 9138

Citibank AAdvantage
Account Number 9138
PAYMENT DUE DATE 01/17/00
Statement Date 12/21/99 | Total Credit Line $20000 | Cash Advance Limit $12000 | New Balance $20051.95

New Balance: $20051.95

Judge Porteous certifies the information is "accurate, true, and complete to the best of my knowledge and belief. . . ."

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date 5/5/00

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

HP Ex. 527

INSTRUCTIONS AS TO THE REPORTING OF LIABILITIES ON THE FINANCIAL DISCLOSURE FORMS

VI. Liabilities

Information pertaining to the reporting person, spouse, and dependent children is required in this Part.

In this Part list all of your, your spouse's and dependent children's liabilities to any creditor other than a spouse, parent, brother, sister, or child, which exceeded $10,000 at any time during the reporting period. Sections 102(a)(4) and 102(e)(1)(E).

For annual Reports, the reporting period is the calendar year preceding the date of the Report. Section 102(a)(4). For initial and final Reports, see Appendices I and II, respectively, for the appropriate reporting periods.

In this Part, list the identity and category of value of each liability. The identity includes the name of the creditor and a description of the liability. Section 102(a)(4). To assist the reviewer, liabilities should be listed in the same order as in the previous Report.

The category codes for the amount owed as of the end of the reporting period are shown on the Report and are as follows:

J -	$15,000 or less	P1 -	$1,000,001 to $5,000,000
K -	$15,001 to $50,000	P2 -	$5,000,001 to $25,000,000
L -	$50,001 to $100,000	P3 -	$25,000,001 to $50,000,000
M -	$100,001 to $250,000	P4 -	more than $50,000,000
N -	$250,001 to $500,000		
O -	$500,001 to $1,000,000		

Section 102(d)(1).

The reporting requirement relates to obligations that at any time during the reporting period exceeded $10,000, but the amount to be shown by the category code is the amount owed as of the end of the reporting period.

HP Ex. 528

Judge Porteous's Gambling Markers – July 2001 through July 2002

Date	Casino	Number of Markers	Dollar Amount	Repayment Date(s)
7/18/2001	Treasure Chest	1	$500	7/19/2001
7/23/2001	Treasure Chest	1	$1,000	7/23/2001
8/20-21/2001	Treasure Chest	8	$8,000	8/20-21/2001 ($5,000) 9/9/2001 ($2,000) 9/15/2001 ($1,000)
9/28/2001	Harrah's	2	$2,000	10/28/2001
10/13/2001	Treasure Chest	2	$1,000	10/13/2001
10/17-18/2001	Treasure Chest	9	$5,900	10/17/2001 ($1,500) 11/9/2001 ($4,400)
10/31-11/01/2001	Beau Rivage	6	$3,000	11/1/2001
11/27/2001	Treasure Chest	2	$1,000	11/27/2001
12/11/2001	Treasure Chest	2	$1,000	12/11/2001
12/20/2001	Harrah's	1	$1,000	11/9/2002
2/12/2002	Grand Casino Gulfport	1	$1,000	2/12/2002
4/1/2002	Treasure Chest	3	$2,500	4/1/2002
5/26/2002	Grand Casino Gulfport	1	$1,000	5/26/2002
7/4-5/2002	Grand Casino Gulfport	3	$2,500	7/5/2002 ($1,200) 8/11/2002 ($1,300)
Total:		**42**	**$33,400**	

HP Ex. 532